



MAYOR AND COUNCIL AGENDA

NO. 11

DEPT.: / Community Planning and Development Services
Contact: Ryan McDavitt, Program Manager for Town Center

DATE: July 19, 2004

ACTION: Approval of remaining Public Improvements Contract (Phase II)

To: Whiting-Turner

Of: Baltimore, MD

	Pub. Imprv.	Pub. Grge.	Total
12Jul04	\$3,976,249	\$4,069,681	\$8,045,930
26Jul04	\$10,973,751	\$64,319	\$11,038,070
Sub-total	\$14,950,000	\$4,134,000	
Total	\$19,084,000		

For: Construction of Rockville Town Square

ACTION STATUS:

FOR THE MEETING OF: 7/26/04

INTRODUCED

PUB. HEARING

INSTRUCTIONS

APPROVED

EFFECTIVE

ROCKVILLE CITY CODE,

CHAPTER

SECTION

☒ CONSENT AGENDA

RECOMMENDATION: Staff recommends the modification to the Whiting-Turner contract in the amount of \$11,038,070 in a form approved by the City Attorney to provide construction services for the Rockville Town Square Project.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

Funding: Sufficient funding is available in Account No. 420-600-0A80-0426.

BACKGROUND: The Mayor and City Council at the 12 July 2004 meeting, in order to maintain the project completion schedule and budget, approved Phase I of the construction site work for the Rockville Town Square Project. The construction started July 15, 2004. To achieve that schedule, the City of Rockville awarded a portion of the construction contract for the public improvements (\$3,976,249) and a portion of the garage construction (\$4,069,681), in the total amount of \$8,045,930. That award allowed Whiting-Turner to contract with the sub-contractors needed to perform initial site work. Whiting-Turner was given a Notice to Proceed (NTP) for a portion of the Phase I scope of work with a "not to exceed" amount of \$975,679. The initial not to exceed amount allowed 60 days of work while the full scope of work and costs are finalized. The NTP will be modified once the final agreement is approved by the City Attorney and signed by all parties lifting the \$975,679 not to exceed limitation.

The approval of an additional \$11,038,070 will cover the remaining scope of work for the Public Improvement contract for the Rockville Town Center. This action will bring the total awarded value of the Public Improvement Contract to a total of \$19,084,000. Of that value, \$4,134,000 is solely associated with the Public Garage project and will be transferred to the final contract for the garage construction when awarded this fall. The final GMP for the public garages is anticipated to be \$35 million.

The Owner Controlled Insurance Program (OCIP) is still under negotiation. Whiting-Turner, as part of Add Alternate 12, will provide their own insurance until the OCIP is approved and in effect. After the OCIP is finalized, Whiting-Turner and sub-contractors will cancel their insurance, providing a credit to the City of Rockville for the unused balance, and be covered under the OCIP.

The public garage budget is increased \$64,319 due to the following items:

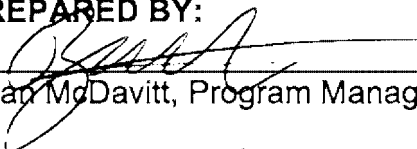
1. Add \$10,750 to line 2E Sheeting and Shoring to cover additional sub-contractor insurance needed due to the OCIP not being in place 1 August.
2. Deduct \$28,431 from Whiting-Turners insurance cost to reflect actual costs.
3. Add \$82,000 construction contingency.

Sections 17-85 and 17-88 of the City Code allows the City to utilize a special procurement procedure if the Mayor and Council make a written determination that a unique or unusual circumstance exists that makes competitive procurement process contrary to the City's interest. There must be a written record of the reasons justifying the special procurement.

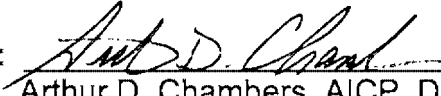
Therefore, approval of this agenda item will also include a finding by the Mayor and Council that the public/private nature of the Town Square project, the City's contractual obligations to comply with the terms of the amended and restated GDA (approved June 2004), the October 2003 MOU between the City and County and the mixed use buildings create unique and/or unusual circumstances. There was the competitive process previously described. These factors make the typical competitive procurement process contrary to the City's interest and justifies the special procurement procedure. It also will allow the Town Square to be completed on time.

In summary approval of this contract will allow construction, primarily earthwork and demolition, to begin. This will allow the City to do the pad work for the library site and to maintain the schedule.

PREPARED BY:


Ryan McDavitt, Program Manager for Town Center

APPROVE:


Arthur D. Chambers, AICP, Director, CPDS

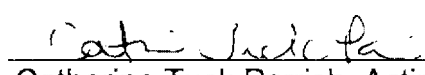
7/22/04
Date

APPROVE:


Eileen Morris, Contract Officer

7/22/04
Date

APPROVE:


Catherine Tuck Parrish, Acting City Manager

7/22/04
Date

LIST OF ATTACHMENTS:

- 1) Whiting-Turner spread Sheet showing current GMP for Public Improvements, and excavation for Public Garages dated 7/21/04.
- 2) Full Contract as of July 21, 2004

Rockville Town Square
Exhibit 5
Schedule of Values

ATTACHMENT 1
7/21/04

Bid Unit	Description	Sitework GMP	Partial Public Garage GMP
01A	Surveying	\$ 50,650	\$ 9,375
01B	Temporary Fence	In Genl. Conditions	
02A	Earthwork	\$ 668,900	\$ 2,930,570
02B	Site Utilities	\$ 2,889,000	
02C	Site Concrete	\$ 732,485	
02D	Asphalt Paving	\$ 237,908	
02E	Sheeting & Shoring	\$ -	\$ 671,950
02F	Pavers	\$ 702,045	
02G	Granite Curbs	\$ 255,990	
02H	Landscaping	\$ 614,740	
02I	Building Demolition	\$ 636,948	
02J	Site Masonry	\$ 245,400	
02K	Dewatering	\$ -	\$ 42,536
02L	Traffic Signals	\$ 241,287	
02M	Site Amenities	\$ 315,598	
02N	Site Electric	\$ 2,471,178	
02O	Fountains	\$ 510,078	
	Subtotal	\$ 10,573,000	
	Environ. Cleanup (Allowance)	Not Included	
	Block 3A Undercut (Allowance)	\$ 200,000	
	Block 3A Allowance	\$ 2,350,000	
	Subtotal	\$ 13,123,000	\$ 3,655,000
	General Conditions (Prorated)	\$ 876,000	\$ 192,000
	Liability Insurance (0.7%) **	\$ 103,000	\$ 8,000
	Builder's Risk Insurance (0.3%)	\$ 43,000	\$ 12,000
	P & P Bond (0.785%)	\$ 111,000	##
	Fee (Fixed Base Fee)	\$ 286,000	\$ 78,000
	Preconstruction	\$ 65,000	\$ 107,000
	Subtotal	\$ 14,607,000	\$ 4,052,000
	Construction Contingency (2%)	\$ 293,000	\$ 82,000
	Incentive Bonus:		++
	Maryland Avenue	\$ 25,000	
	Market Street	\$ 25,000	
	Block 5 Garage	\$ -	
	Block 1/2 Garage	\$ -	
	Block 4 Garage	\$ -	
	Subtotal	\$ 14,950,000	\$ 4,134,000
Total GMP		\$19,084,000	
Notes:			
++ Incentive Bonus to be included in Complete GMP once it is established for this work			
** General Liability Rate will be adjusted to 0.2% upon implementation of OCIP			
## P & P Bond will be part of the total Public Garage GMP			
Alternates Included Above:			
No. 12 Contractor Provided Insurance			
No. 13 Modify Specification to Allow for Backfill with ML Material			
No. 15 Payment and Performance Bond			

Standard Form of Agreement Between Owner and Contractor where the basis for payment is the COST OF THE WORK PLUS A FEE with a negotiated Guaranteed Maximum Price

AIA Document A111 - 1997
1997 Edition - Electronic Format

AGREEMENT made as of the _____ day of _____ in the year Two Thousand
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

The Mayor and Council of Rockville
111 Maryland Avenue
Rockville, MD 20850

and the Contractor:
(Name, address and other information)
[The Whiting-Turner Contracting Company
300 East Joppa Road, 8th Floor
Towson, MD 21286

The Project is:
Rockville Town Square
(Name and location)

The ~~Architect~~ Civil Engineer is:
(Name, address and other information)

Macris, Hendricks & Glascock, P.A.
Civil Engineer
[Insert Address]

The Owner and Contractor agree as follows.

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, General Conditions of the Contract (amended AIA Document A201-1997) ~~(General, Supplementary and other Conditions)~~, Drawings, Specifications, Addenda issued prior to execution of this Agreement, specifically including Exhibit 1 hereto which is Contractor's early start agreement and which identifies the initial scope of work under this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract

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represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern. In the event of a conflict between the Contract Documents, the order of precedence shall be (1) this Agreement, (2) the Plans and Drawings, and (3) the Specifications.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents and reasonably inferable by the Contractor as necessary to produce the results intended by the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

2.1 The Preconstruction Phase is the period prior to commencement of the Work. As a part of the services to be rendered by Contractor to Owner hereunder, and in consideration of the Contractor's Fee, Contractor shall also perform Preconstruction Phase Services, including without limitation those services set forth below per the established price which is included in the Guaranteed Maximum Price.

2.1.1 Prepare a preliminary/preconstruction Project design and construction schedule that coordinates and integrates the Civil Engineer's design efforts with the construction schedule in accordance with General Conditions Paragraph 3.10 within thirty (30) days after execution of this Agreement. This project schedule shall be modified as agreed upon by Owner and Contractor. Upon completion of the Construction Documents, but before those documents are submitted to Subcontractors for bids, Contractor shall prepare a final Project construction schedule in accordance with Paragraph 3.10 of the General Conditions, at which time the preliminary construction schedule shall be of no further force and effect. The preliminary construction schedule and, upon its completion the final Project construction schedule, shall be attached hereto as Exhibit A.

2.1.2 Provide estimating services throughout the Preconstruction Phase. Prepare a Project budget including, among other things, the assumptions upon which the budget is based, at the completion of the schematic design phase for each portion of the Work. Update the Project budget upon completion of the design development phase for each portion of the Work. Budgets and estimates shall show the quantity and cost assumptions for labor, materials and equipment and include items reasonably inferable from the design documents prepared by the Civil Engineer. At Owner's request, update and refine the Project budget for the Owner's approval as the development of the Drawings and Specifications proceeds through the Construction Documents phase, and advise the Owner and the Civil Engineer if it appears that the Project construction budget will not be met and make recommendations for corrective action. Subject to the Owner's approval, the Contractor shall be permitted to include clearly identified contingencies for design, bidding and price escalation.

2.1.3 Assist in the Civil Engineer's development of the final Drawings and Specifications by periodically furnishing recommendations to Owner and the Civil Engineer that will help to achieve the Owner's Project objectives, including, without limitation, time of construction, cost of construction, functional performance, and aesthetics. This assistance shall include following:

2.1.3.1 Periodically review, as required by the Owner, the drawings and specifications as they are being prepared, recommending value engineering proposals and alternative solutions whenever design details adversely affect construction feasibility, construction budget or schedule. Project factors that the Contractor shall consider include site use, selection of building materials, equipment and systems, availability of labor, methods of construction, construction feasibility, time requirements for procurement, installation and completion of the construction elements, and any other similar items benefiting from evaluation prior to the completion of the Drawings and Specifications.

2.1.3.2 Give particular attention to alternative design proposals, possible economies, and identification of options that will maximize the benefits that the Owner will derive from the completion of the Work. As requested by the Owner, the Contractor shall prepare a specific analysis of the cost effectiveness and performance capabilities of any building system or component under consideration or specified for the Work, recommendations on field logistics, and any other studies that are required to complete

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the Work successfully.

2.1.3.3 Review the Construction Documents submissions by the Civil Engineer and provide advice and comment on the sufficiency and quality of the architectural, civil, structural, mechanical electrical and plumbing systems from a constructability perspective, to assist in the determination of whether the documents are clear in intention, adequate in information and generally sufficient for construction.

2.1.4 Recommend for purchase and expedite the procurement of long-lead items to ensure their delivery by the required dates.

2.1.5 Make recommendations to the Owner and the Civil Engineer regarding alternative approaches to design and construction and the division of the Drawings and Specifications, along with design reports and other explanatory attachments, into construction packages for the entire or a coordinated portions of the Work to facilitate the bidding and awarding of Subcontracts, allowing for phased construction and taking into consideration such factors as time performance, availability of labor, overlapping trade jurisdictions and provisions for temporary facilities.

2.1.6 Develop Subcontractor interest in the Project and, as working Drawings and Specifications are completed, pre-qualify Subcontractors for the Project.

2.1.7 Identify methods for consideration by Owner to expedite completion of construction without affecting quality.

2.1.8 Provide the services of such personnel to attend meetings with the Owner, Civil Engineer and government officials as are required to perform the required preconstruction services. Such meetings shall be held as frequently as Owner reasonably requires, but no less often than every week. Contractor shall record the minutes of each meeting and, within three (3) business days after the date of the meeting, deliver to Owner and each other entity which attended the meeting, or may be affected by the results thereof, a copy of the minutes of such meeting.

2.1.9 Prepare, once per month during the Preconstruction Phase, a Progress Report in a form, detail and character approved by the Owner. Each Progress Report during the Preconstruction Phase shall include an updated current schedule and specify, among other things, the status of design, procurement and construction activities, an estimated percentage of completion, delays or potential delays, and, whether the Project's progress is consistent with the schedule. If a Progress Report indicates that a delay may be expected or has occurred, the Contractor shall ~~indicate~~ suggest possible remedies on how the lost time ~~will~~ can be ~~regained without~~ recovered to minimize an increase to the construction budget or schedule. The Progress Report also shall include an updated and current Project construction budget and specify, among other things, status of the Project construction budget, including, without limitation, initial and revised budget line items, amounts committed to date, cash flow projections, ~~and a statement on whether the balance of the funds available for the Work is sufficient to permit final completion thereof.~~ When the progress Report indicates that a cost overrun may be expected or has occurred, the Contractor shall ~~indicate~~ suggest possible remedies on how the impact can be mitigated ~~without~~ to minimize an increase to the construction budget or schedule.

2.1.10 Take at least three (3) competitive bids on the Work from the various qualified trade Subcontractors, unless Owner directs otherwise or Owner concurs in writing that competitive bidding is not practical.

2.1.10.1 Owner may be present when all bids are received and reserves the right to review all bids submitted. After the receipt of bids, Contractor shall submit to Owner, for Owner's review, (i) a bid analysis and list of proposed Subcontractors for the performance of any portion of the Work, (ii) the scope of the Work to be performed under the respective Subcontract, (iii) a detailed estimate of the Cost of the Work based on such bids, as well as differences between the bids and the bid analysis, and (iv) a list of alternate selections of persons or entities for each proposed Subcontractor and their respective bids. Contractor shall consult with Owner before awarding the Subcontracts and shall provide Owner with a copy of each proposed Subcontract for Owner's review. Contractor shall provide Owner with a conformed copy of each executed Subcontract.

2.1.10.2 In the event Contractor desires to perform any portion of the Work with its own forces ("Contractor Trade Work"),

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Contractor shall attempt to obtain at least two (2) other competitive bids from Subcontractors approved by Owner. In addition, Owner shall be permitted to review Contractor's bid estimate in detail, as well as Contractor's actual costs to perform similar work on other projects. Contractor Trade Work shall be performed using a separate guaranteed maximum cost of Contractor Trade Work, and any savings shall be divided as set forth in Subparagraph 5.4.1.

2.1.10.3 Owner, in Owner's sole and absolute discretion, shall determine whether or not to accept the bid recommended by Contractor, and if Owner, in Owner's sole and absolute discretion, does not accept such recommended bid, then the Guaranteed Maximum Price shall be increased if allowed by the provisions of Paragraph 10.2.

2.2 The Contractor agrees to construct the Project in accordance with the requirements of the Contract Documents, in accordance with the highest construction industry standards and practices, and in compliance with the Environmental/Geotechnical Reports (as hereinafter defined) and all applicable federal, state and local laws, codes, ordinances, regulations and orders, as well as applicable regulations of any other body with jurisdiction over the Project applicable to the performance of the Work by the Contractors ("Legal Requirements"). Contractor shall not be responsible for compliance of the design of the Project with applicable federal, state and local laws, codes, ordinances, regulations and orders ("the Design Legal Requirements"). If Contractor knows or should know that any part of the Work does not comply with the the Design Legal Requirements, it shall promptly report such matter to the Owner. If the Contractor proceeds with any part of the Work with knowledge that such portion is in violation of any Legal Requirement or Design Legal Requirement, Contractor shall be fully responsible of all costs of having to replace such part of the Work. The Contractor shall inform itself fully of all Legal Requirements, shall comply with all Legal Requirements and shall cause all of its Subcontractors to similarly comply with all Legal Requirements.

2.3 CONTRACTOR REVIEW

2.3.1 Owner and the Contractor agree that the Owner has selected the Contractor for this Project because of the Contractor's special expertise experience in constructing similar projects. Before executing this Agreement and before commencing construction for any phase of the Work, the Contractor carefully reviewed and shall carefully review the Project Site, all Contract Documents, all Legal Requirements, the environmental and geotechnical reports listed in Exhibit H hereto (the "Environmental/Geotechnical Reports"), and all other exhibits hereto.

2.3.2 The Contractor understands that the Work requires all construction necessary to result in a completed and functioning Project, including without limitation fully operational and functional components as required by the Contract Documents. The Contractor shall perform all construction necessary to result in a completed and functioning Project, including without limitation fully operational and functional components as required by the Contract Documents. notwithstanding, among other things, errors, omissions, inconsistencies, or lack of coordination in the Drawings and Specifications that an experienced contractor that has constructed many similar projects and performed the Preconstruction Services could reasonably have recognized and included in the Guaranteed Maximum Price (together, "Discoverable Errors"). Therefore, (The Contractor represents that if he encounters any errors, omissions, inconsistencies, or lack of coordination in the Drawings and Specifications Discoverable Errors, the Contractor shall promptly report them to the Owner; however, the cost to perform any additional Work necessary to complete the Project, or any increase in the cost of Work resulting from any impact on other Work or any additional Work necessary to complete the Project shall not constitute a Cost of the Work and shall not form a basis for an increase in the Guaranteed Maximum Price or the Contract Time. The Contractor shall not be responsible for design errors or omissions in the Drawings and Specifications.

2.3.3 In addition, as part of the Work, the Contractor is responsible for all construction necessary to satisfy all Legal Requirements and requirements of public or private utilities necessary to result in a completed and functioning Project, with no increases in the Guaranteed Maximum Price or Contract Time.

2.3.4 The Contractor acknowledges that (a) the Contract Sum includes sufficient consideration for all costs which may result from the risks assumed by the Contractor in this Contract, including, without limitation, this Paragraph 2.3, and (b) the Contractor waives all rights to claim additional costs or additional time as a result of the assumption of these risks, except as otherwise

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provided in this Agreement, and (c) the provisions of this Paragraph 2.3 apply notwithstanding any provisions to the contrary contained in the Contract Documents.

2.4 Without otherwise limiting the Contractor's obligations, duties and agreements set forth in this Agreement or in the General Conditions, the Contractor shall carefully inspect the Project site, particularly as it relates to adjacent property and structures located adjacent to or near the Project site, undertake all reasonable measures necessary to protect adjacent or nearby structures and property against damage or loss and conduct its operations in a manner so as not to damage adjacent or nearby structures or property. ~~Contractor acknowledges receipt of full information concerning the general use of each of the adjoining and nearby facilities and the nature of the equipment therein contained.~~ Notwithstanding anything else to the contrary contained in the Contract Documents, any damage to or loss of adjacent or nearby structures or property shall be the responsibility of the Contractor and shall be remedied by the Contractor at its sole expense without recourse to the Owner, except for damage attributed solely to the acts or omissions of the Owner. To the extent that Contractor remedies damage to adjacent or nearby structures that are caused by the sole acts or omissions of the Owner, Civil Engineer or others over who the Owner has complete control, Contractor shall be entitled to an equitable adjustment for the costs of such repair. Cost of repairs for damages for which the Contractor is responsible shall be reimbursable within the Guaranteed Maximum Price as provided for in this Agreement.

2.5 ENVIRONMENTAL PROTOCOL

2.5.1 Contractor acknowledges that the Environmental/Geotechnical Reports, and/or the Project Specifications, indicate that contaminants exist on the site as described in those documents. ~~Any substitutions that Contractor may propose, which may be affected by the known contaminants, will be compatible with those contaminants. No change to the Contract Sum, Guaranteed Maximum Price or Contract Time will be allowed for compliance with the criteria concerning environmental conditions stated in the Environmental/Geotechnical Reports listed in the Agreement and/or contained in the Project Specifications.~~ In all events, the Contractor must follow the environmental protocol listed in Exhibit I hereto.

2.6 COORDINATION WITH OTHER CONSTRUCTION

2.6.1 The Contractor acknowledges that a critical aspect of this Project is that it will be constructed at the same time as other parts of the Rockville Town Center development (a) being constructed by Contractor pursuant to separate contracts with the Owner, and (b) being constructed by the City. The Contractor shall coordinate its Work with the other contractors and with its work on the other parts of the Rockville Town Center development so that those other operations are in no way impeded or delayed. Work necessary to perform this coordination shall not form the basis for an increase to the Contract Sum, Guaranteed Maximum Price, or Contract Time, and the Contractor also shall not receive an increase in the Contract Sum, Guaranteed Maximum Price, or Contract Time for any reason related to any other operations on the Rockville Town Center Development. If the Contractor contends that it has fulfilled its obligations in this Paragraph 2.6 but the City or its Developer or any of their contractors are delaying the Contractor's Work or increasing the Contractor's Cost of the Work, then the Contractor must make a claim as set forth in General Conditions Subparagraph 4.3.5 and may be entitled to an equitable adjustment in the Contract Time, Contract Sum and Guaranteed Maximum Price for any such delay.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the ~~Architect~~ Civil Engineer, the Owner, and the Owner's representatives, including but not limited to the Owner's Development Service Manager, Federal Realty Investment Trust ("FRIT") ("Owner's Representatives") and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a ~~commercially reasonable manner~~ timely manner, information required by the Contractor and to make timely payments to the Contractor in accordance with the requirements of the Contract Documents.

3.1 Except as otherwise provided in the Agreement, the Owner designates Donald Briggs of FRIT and Art Chambers as the

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representatives of the Owner who are authorized to act for the Owner. FRIT is an independent contractor of the Owner pursuant to a Development Services Agreement dated November 17, 2003, and its authority and the authority of any of its employees, including Donald Briggs, to act on behalf of the Owner is limited to the authority granted in the Development Services Agreement, and the Owner shall not be responsible for any actions of FRIT or its employees beyond that granted in the Development Services Agreement. The Owner shall have a minimum of twenty-four (24) hours to respond to any issue raised by the Contractor which may affect the Guaranteed Maximum Price or the Contract Time.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4.1 The date of commencement of the Work shall be ~~the date of this Agreement unless a different date is stated below or provision is made for~~ the date to be fixed in a notice to proceed issued by the Owner in writing following issuance of a Notice to Proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

4.2 The Contract Time shall be measured from the date of commencement.

4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than the date set forth in this Agreement therefor in the GMP Modification, days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

, subject to adjustments of this Contract Time as provided in the Contract Documents. The Contractor shall achieve final completion of all Work within sixty (60) days after Substantial Completion of all Work is achieved.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time, or for bonus payments for early completion of the Work.)

4.4 Notwithstanding any contrary provisions in the Contract Documents, the term "Substantial Completion" relating to the completion of the entire Project shall mean the date certified, respectively, by the Civil Engineer and approved by the Owner when (i) construction of all of the Work is sufficiently complete in accordance with the Contract Documents, so that the Owner can beneficially use the Project for its intended purpose, (ii) the Contractor has prepared and Owner has approved a punchlist of Work remaining to be performed and has established a reserve, in addition to Retainage, of at least 200% of the value of the punchlist as reasonably determined by Owner, (iii) all required governmental inspections applicable to the Contractor's Work have been conducted and any and all final approvals required for its use have been obtained from public and quasi-public authorities with jurisdiction over the Project, and (iv) all other conditions precedent to Substantial Completion as set forth in the Contract Documents have been satisfied. The Date of Substantial Completion shall be reflected in the Contractor's Construction Schedule, prepared pursuant to Paragraph 3.10 of the General Conditions.

4.5 Contractor acknowledges and agrees that time is of the essence in completing the Work required hereunder and Contractor's failure to meet the deadlines set forth in the Schedule shall, unless otherwise excused, be a material breach of this Agreement. If the Contractor fails to achieve Substantial Completion of the Work by the date set forth in Paragraph 4.3, as such date may be modified in accordance with the terms of the Agreement, the Contractor shall pay the Owner liquidated damages, and not as a penalty, in the amount of Two Hundred Dollars (\$200.00) per calendar day until Substantial Completion of the Work is achieved. Owner may deduct any liquidated damages from any amounts due Contractor or Owner may require Contractor to pay any liquidated damages, which exceed amounts due Contractor, within ten (10) days after such request. Until any liquidated damages are paid to Owner, Owner shall be entitled to receive interest at the rate set forth in Paragraph 14.2 of this Agreement. If liquidated damages are actually recovered by the Owner, the above-stated liquidated damages provided for herein shall be Owner's exclusive damage remedy for Contractor's failure to complete the Work on or before the date of Substantial Completion therefor, but such damages shall in no way limit Owner's other rights (e.g., termination) under the Contract or Owner's entitlement to damages for any other injury, damage or loss, other than for delay, for which Contractor may be responsible pursuant to the terms of this Agreement or applicable law. If for any reason the liquidated damages as set forth in this Paragraph are unenforceable, the Owner shall be entitled to receive its actual damages sustained as a result of the Contractor's failure to

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achieve Substantial Completion as required.

4.6 The Contractor shall prepare and deliver to the Owner within thirty (30) days after the Notice to Proceed, for the Owner's review and approval, a Submittal Review Schedule setting forth reasonable and adequate time for the submission and review of all submittals.

ARTICLE 5 BASIS FOR PAYMENT

5.1 CONTRACT SUM

5.1.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

5.1.2 The Contractor's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee, and describe the method of adjustment of the Contractor's Fee for changes in the Work.)

Two percent (2%) of the Cost of the Work. [A fixed amount of \$ _____]. The base fee and incentive fee shall be in accordance with Exhibit _____

5.2 GUARANTEED MAXIMUM PRICE

5.2.1 The sum of the Cost of the Work, General Conditions, Insurance (which is required to be maintained by Contractor under the Contract Documents) and Bond and the Contractor's Fee is guaranteed by the Contractor not to exceed _____ Dollars (\$ _____), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs for which the Contractor is responsible which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

(Insert specific provisions if the Contractor is to participate in any savings.)

5.2.1.1 The Guaranteed Maximum Price shall be calculated as follows:

~~**5.2.1.1.1** Contractor understands and agrees that all Contract Documents for the Project are not complete as of the date of this Contract and, at the Owner's sole discretion, Work may be performed in portions designated by the Civil Engineer with Owner's approval (the "Designated Portions") as the Contract Documents for a Designated Portion are completed so that the Project can be constructed as expeditiously as possible. When the Civil Engineer provides the Contractor with the Contract Documents for a Designated Portion, Contractor shall obtain bids for such Work from Subcontractors, Sub-Subcontractors, fabricators and suppliers as required by Article 10 below and the General Conditions. Contractor shall then submit a detailed proposal, in the form required by Owner, to Owner setting forth the Designated Portion Guaranteed Maximum Price, including General Conditions Costs and the portion of Contractor's Fee, to perform that Designated Portion of the Work. Upon agreement by Owner and Contractor as to the Designated Portion Guaranteed Maximum Price for such Designated Portion of the Work, the parties shall agree upon a Modification of this Agreement and Contractor shall proceed to perform such Designated Portion of the Work as directed by Owner. Owner agrees and understands that the Contractor's Fee and General Conditions are based upon the entire Project and that Contractor shall allocate its Contractor's Fee and General Conditions to the Designated Portion Guaranteed Maximum Price on a pro-rata basis.~~

~~**5.2.1.1.2** (a) Within thirty (30) days following delivery to Contractor of the Construction Documents for the entire Project (to the extent not previously delivered to Contractor pursuant to Paragraph 5.2.1.1.1), Contractor shall submit to Owner its proposed Guaranteed Maximum Price for the entire Project, consisting of the Cost of the Work including, among other things, the General Conditions Costs & Categories, plus the Contractor's Fee, the Schedule of Values, allowances, assumptions on which the Guaranteed Maximum Price is based, alternates, unit prices, the final Project Schedule, proposed Substantial Completion date and Final Completion date, interim completion dates and Milestone Dates, and such other information and supporting documentation as Owner may request. If Owner and Contractor are unable to agree upon a Guaranteed Maximum Price and other terms within~~

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~~fourteen (14) days thereafter, the Owner may terminate this Contract by providing Contractor with written notice of termination. Promptly after such termination, Owner shall pay the Contractor _____ Thousand Dollars (\$ _____) as full payment for all services performed by Contractor, which shall be the exclusive and total amount due Contractor in connection with the Agreement and the termination thereof pursuant to this Subparagraph.~~

~~(b) If the parties agree upon the Guaranteed Maximum Price, the parties shall enter into a modification of this Agreement (the "GMP Modification") setting forth the Guaranteed Maximum Price, and the GMP Modification shall also identify the Schedule of Values, allowances, assumptions on which the Guaranteed Maximum Price is based, alternates, unit prices, the final Project Schedule, proposed Substantial Completion date and Final Completion date, interim completion dates and Milestone Dates, and the Drawings, Specifications and any other Contract Documents on which such Guaranteed Maximum Price shall have been determined.~~

5.2.2 The Guaranteed Maximum Price is based on the following alternates identified in Exhibit _____, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

As set forth in the GMP Modification

5.2.3 Unit prices, if any, are as follows identified in Exhibit _____:

~~As set forth in the GMP Modification, such unit prices are considered complete and include (a) all materials, equipment, labor, delivery, installation, overhead and profit of Subcontractors and suppliers and (b) other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply. Unit prices do not include Contractor's Fee and Insurance/Bond costs which will be applied to Changes as provided for in this Agreement.~~

5.2.4 Allowances, if any, are as follows identified in Exhibit _____:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

As set forth in the GMP Modification

5.2.5 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows identified in Exhibit _____:

As set forth in the GMP Modification

5.2.6 To the extent that the Drawings and Specifications are anticipated to require further development by the ~~Architect~~ Civil Engineer, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. ~~By executing this Agreement and the GMP Modification, the Contractor represents and warrants that the Contract Documents, including but not limited to the design documents and all materials and information furnished the Contractor as of the date of the GMP Modification this Agreement, have described the scope, requirements and design intent of the Work in detail sufficient to enable the Contractor to establish firmly the Guaranteed Maximum Price, including but not limited to the Contractor's Fee, General Conditions Costs set forth in Exhibit _____, as well as the Contract Time. Such representation and warranty is subject to Contractor's assumptions and qualifications provided to the Owner upon which Contractor is basing his GMP. The Contractor shall not be permitted to claim any adjustment in the Guaranteed Maximum Price or Contract Time in connection with the completion of final Construction Documents, except for Scope Changes. A Scope Change is hereby deemed to mean Work described in supplemental documents that is not required by the terms of the Contract Documents (including but not limited to Paragraph 2.3) and that is not reasonably inferable from either the Contract Documents delivered to Contractor as of the execution of the the GMP Modification this Agreement ("Existing Documents") or any other previously furnished Contract Documents by a contractor of similar skill, experience, and expertise as necessary for the proper, timely and orderly completion of the Work and is (i) materially inconsistent with the Existing Documents or (ii) a material change in the quantity, quality, programmatic requirements, or other substantial deviation in the Existing Documents or (iii) costs related to errors, omissions, inconsistencies, or lack of coordination in the Drawings and~~

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Specifications. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

5.3 For changes in the Work, the Contractor's, Subcontractor's and sub-subcontractor's mark-ups shall be calculated as follows:

5.3.1 For changes to the Work performed by Contractor's own forces, (1) the Contractor shall receive a mark-up of ten percent (10%) of the actual direct labor and material cost of the changed Work as Contractor's Fee and (2) if the changed Work causes an increase in the Contract Time, the Contractor shall receive its actual proven increase in the General Conditions Costs and Categories set forth in Exhibit _____.

5.3.2 For changes to the Work performed by a Subcontractor, (1) the Contractor shall receive a mark-up of two percent (2%) of the amount owed to the Subcontractor for the performance of the changed Work as Contractor's Fee and (2) if the changed Work causes an increase in the Contract Time, the Contractor shall receive its actual proven increase in the General Conditions Costs and Categories set forth in Exhibit _____.

5.3.3 For changes to the Work performed by a Subcontractor and/or a sub-subcontractor, (1) each Subcontractor and/or sub-subcontractor actually performing such Work shall receive a mark-up of fifteen percent (15%) of the actual direct labor and material cost of the changed Work for its combined overhead and profit and (2) if the changed Work causes an increase in the Contract Time, each Subcontractor and/or sub-subcontractor actually performing such Work shall receive its proven increase for its General Conditions Costs. The Subcontractor or Sub-subcontractor that has retained the entity actually performing the Work shall receive a mark-up of five percent (5%) of the actual direct labor and materials costs of the changed Work for its Fee and shall receive ~~no payment~~ its proven increase, if applicable, for General Conditions Costs. Notwithstanding the foregoing, in no event shall mark-ups payable by the Owner for changes to the Work performed by a Subcontractor and/or Sub-subcontractor exceed in the aggregate twenty percent (20%) of the initial cost of the changed Work.

5.3.4 When both additions and deletions covering related Work or substitutions are in any one change, the increase of Contractor's Fee shall be figured on the basis of the net increase, if any, with respect to the change.

5.3.5 In the event of a net deductive Change Order, the Contractor's Fee will not be decreased by the amount of the deductive part of the Change Order, unless otherwise mutually agreed by Owner and Contractor.

5.3.6 "General Conditions Costs" includes, but is not limited to, all Contractor, Subcontractor and/or sub-subcontractor costs such as preconstruction, field supervision, ~~laborers, surveying, photographs, testing and inspection,~~ temporary utilities related to field office, ~~crane connection,~~ temporary toilet and sanitary, first aid, fencing, site security, ~~barriers,~~ dust control, ~~water control,~~ parking, signage, field trailer and office, office supplies, computers, data processing, transportation, ~~deliveries, material protection,~~ tools, ~~scaffolding, dumpster,~~ final cleaning, and similar indirect costs. The scope and costs included in the General Conditions Costs are identified in Exhibit ____ >

5.4 COSTS IN EXCESS OF THE GUARANTEED MAXIMUM PRICE; SAVINGS

5.4.1 If the actual Cost of the Work, General Conditions, Insurance (which is required to be maintained by Contractor under the Contract Documents) and Bond and Contractor's Fee total less than the Guaranteed Maximum Price as adjusted under this Agreement, then Seventy percent (70%) of all savings will be kept by the Owner and Thirty percent (30%) of the savings will be paid to the Contractor as part of Final Payment. If this Agreement is terminated for any reason prior to Substantial Completion, all savings shall be kept by the Owner. The Contractor shall not share in any cost savings realized from any Allowance items or from General Conditions Costs. ~~This share provision does not apply to the first Twenty one Thousand Dollars (\$21,000) in savings, which savings shall belong solely to the Owner. Contractor's shared savings under this paragraph shall be limited to Eighty-four Thousand Dollars (\$84,000).~~

5.4.2 If the Cost of the Work, General Conditions, Insurance (which is required to be maintained by Contractor under the

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Contract Documents) and Bond and Contractor's Fee together exceed the Guaranteed Maximum Price as adjusted under this Agreement, then Contractor shall pay all of such excess from its own funds and shall have no claim against Owner on account thereof. If Owner is required to pay any such excess for any reason, Contractor shall be obligated to reimburse Owner such amounts plus interest as set forth in Paragraph 14.2 herein plus all costs of collection, including without limitation, attorneys' fees.

5.5 Contractor will provide Owner with a detailed itemization of all of Contractor's General Conditions Costs, which is attached hereto as Exhibit (the "General Conditions Costs & Categories") and made a part hereof as these are the General Conditions Costs for which Contractor may seek reimbursement pursuant to Article 7 of this Agreement. Contractor will provide a line item in their GMP for General Conditions and a breakdown of the items constituting General Conditions and their estimated cost in Exhibit . The General Conditions line items are not guaranteed.

5.6 Contractor represents and warrants to Owner that, prior to performing any Work, it (i) carefully reviewed all applicable Contract Documents and (ii) can complete all Work in accordance with the Contract Documents and Legal Requirements for a cost not exceeding the Guaranteed Maximum Price, subject to Contractor's right to additional time and compensation as allowed under this Agreement

5.7 If any governmental authority assesses any tax against the Owner, which tax is the obligation of the Contractor or any Subcontractor, including without limitation any sales tax on materials purchased by the Contractor or any Subcontractor, then within ten (10) days after the Owner's request for payment from the Contractor, the Owner may deduct the amount of the tax and any penalty from any amount due the Contractor or the Contractor shall be obligated to reimburse the Owner an amount equal to the assessed tax and any penalties associated with such assessed tax plus interest at the rate set forth in Paragraph 14.2 of this Agreement.

5.8 The Guaranteed Maximum Price contains a "Contingency Fund" which is identified in the Schedule of Values. This Contingency Fund may be drawn upon by the Contractor to pay for Costs of the Work provided (i) Contractor provides Owner with a written explanation of each draw upon the Contingency fund, along with back-up documentation reasonably requested by Owner, with each Application for Payment in which such draw is made, (ii) each Application for Payment contains a report aggregating Contractor's use of the Contingency Fund, and (iii) each draw on the Contingency Fund is approved in advance in writing by Owner.

5.9 The Contractor's Schedule of Values used to establish the Guaranteed Maximum Price shall be a part of the Agreement GMP Modification and attached as Exhibit C hereto and incorporated herein by this reference. Contractor, by bidding and re-bidding of the Work, negotiation with Subcontractors or otherwise, shall undertake to reduce the actual amounts of the subcontracts entered into by Contractor for the performance of the Work. The difference between (i) the subcontract amounts used to establish the Guaranteed Maximum Price as set forth in the Schedule of Values attached hereto as Exhibit C and (ii) the sum of the actual amounts of the subcontracts entered into by Contractor for the performance of the Work, including any early payment discounts, shall hereinafter be referred to as "Buy-Out Savings." Contractor shall inform Owner, in writing, of the Buy-Out Savings within ninety (90) days after agreement upon the GMP Modification and shall provide Owner with any documentation requested by Owner related to the calculation of the Buy-Out Savings. The Buy-Out Savings shall be [added to the Contingency Fund set forth in Paragraph 5.8 above] [subtracted from the Guaranteed Maximum Price by Change Order].

ARTICLE 6 CHANGES IN THE WORK

6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Subparagraph 7.3.3 of AIA Document A201-1997, as modified by Paragraph 5.3 of this Agreement.

6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Clause 7.3.3.3 of AIA Document A201-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Subparagraph 7.3.6 of AIA Document A201-1997 shall have the meanings assigned to them in AIA Document A201-1997 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to

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~~subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.~~

6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-1997 shall mean the Cost of the Work as defined in Article 7 of this Agreement, ~~and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Subparagraph 5.1.2 of this Agreement.~~

6.4 ~~If no specific provision is made in Paragraph 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Paragraph 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.~~

ARTICLE 7 COSTS TO BE REIMBURSED

7.1 COST OF THE WORK

The term Cost of the Work, ~~in addition to the amount for Preconstruction Services and the General Conditions Costs,~~ shall mean costs necessarily and reasonably incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7. Such amounts include the items included in the General Conditions Costs. Notwithstanding anything else in this Agreement, the parties understand and agree that the Cost of the Work does not include any costs in excess of the Guaranteed Maximum Price, as adjusted under this Agreement.

7.1.1 Cost, as defined herein, shall be actual costs paid or incurred by the Contractor, less all discounts, rebates and savings, which are obtained by the Contractor, subject to Article 9 of this Agreement. All payments made by Owner pursuant to this Article 7, whether those payments are actually made before or after the execution of the Contract, are included within the Guaranteed Maximum Price specified in Paragraph 5.2 above. Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 7 or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of reimbursable categories.

7.2 LABOR COSTS

7.2.1 Wages, exclusive of any including markups imposed by Contractor as set forth in Exhibit _____, of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops. Bonuses to Contractor's employees shall only be reimbursed if Owner, in its sole discretion, approves in advance in writing. Profit sharing or retirement plan contributions made to or for the benefit of Contractor's employees are not reimbursable.

7.2.2 Salaries of (i) Contractor's personnel, which are included in the General Conditions Costs, shall be based upon agreed rates and set forth in Exhibit _____, when stationed at the field office, employed full time in the furtherance of the Work, and (ii) safety manager, scheduling clerk, secretary and other personnel as set forth in Exhibit _____ and approved by Owner stationed at the home office to the extent such personnel's time is spent performing Project Work. Contractor shall support all such costs with detailed records setting forth the time spent and, if requested by Owner, describing in detail the Work performed. Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 14 the personnel to be included and whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

7.2.3 As set forth in Exhibit _____, wages ~~Wages~~ and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time reasonably and necessarily required for the Work.

7.2.4 Costs ~~As set forth in Exhibit _____, costs~~ paid or incurred by the Contractor for taxes, insurance, contributions,

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assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, but not merit or other bonuses or profit sharing benefits, provided such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs 7.2.1 through 7.2.3. Burden and mark up for direct hire labor shall be as set forth in Exhibit.

7.3 SUBCONTRACT COSTS

7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts properly entered into under this Agreement.

7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

7.4.2 Costs of materials described in the preceding Subparagraph 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work and shall be properly stored at the Project site in accordance with the Owner's instructions or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

7.5.1 As set forth in Exhibit B, costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value. For purposes of this Subparagraph 7.5.1, any item costing less than Five Hundred Dollars (\$500) shall be assumed to have been consumed in the Work, and no item that costs more than Five Hundred Dollars (\$500) will be considered to have been consumed during the progress of the Work unless actually shown to have been so consumed or unless the item's intended ordinary use requires that it be consumed during the progress of the Work. Contractor shall maintain an inventory list of all items purchased by or on behalf of Owner. The Contractor acknowledges that all tools, equipment and other items purchased in connection with the Work (and if purchased under allowance are subject to Owner's prior approval) are the property of Owner. Upon completion of the Work and before Final Payment, the Contractor shall, at Owner's option, transfer to Owner, sell to a third party or transfer to itself at the then-current fair market value thereof all hoists, scaffolding, forms, handtools and other items purchased for use in performing the Work, whose cost is included in the Cost of the Work. The amounts received from any such sale or transfer (or the fair market value thereof in the case of a transfer to Contractor) shall be paid to the Owner.

7.5.2 As set forth in Exhibit B, rental charges for necessary temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior written approval. Rental charges for Contractor-owned equipment shall be based on the following:

7.5.2.1 Rental rates shall be based on 90% of the applicable rates for equipment listed in the "Green Book" Rental Rates & Specifications for Construction Equipment, latest edition, published by the Associated Equipment Distributors, 615 West 22nd Street, Oakbrook, Illinois, 60523.

7.5.2.2 Rental rates for equipment not listed in the "Green Book" shall be based on 90% of the applicable rates for equipment listed in the "Blue Book", latest edition published by Dataquest, 1290 Ridder Park Drive, San Jose, California, 95131.

7.5.2.3 Rental rates determined from the "Green Book" or "Blue Book" include all items of cost and expense to the Contractor including gas, oil, maintenance, repairs, insurance, and transportation to and from construction site.

7.5.2.4 In no event shall the Contractor be entitled to reimbursement for any cumulative total of rental charges in connection with

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any single type of equipment owned by Contractor in excess of seventy-five percent (75%) of the fair market value of the equipment on the date that the equipment is first rented for the Project. The Contractor shall pay any excess rental charges. Any equipment purchased by the Contractor for the Project shall become the property of the Owner at the completion of the Project if the Owner reimburses the Contractor for the equipment's purchase price.

7.5.3 As set forth in Exhibit B, costs ~~Costs~~ of removal of debris from the site.

7.5.4 As set forth in Exhibit B, costs ~~Costs~~ of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

7.5.5 That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work with Owner's written approval. Such expenses incurred by employees of the Contractor not permanently stationed at the field office must be approved in advance by the Owner. Commuting expenses are to be built into the hourly rates of the Contractor's personnel and not charged separately.

7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner in writing and if Contractor complies with General Conditions Subparagraph 9.3.2.

7.6 MISCELLANEOUS COSTS

7.6.1 As set forth in Exhibit B, that ~~That~~ portion of insurance and bond premiums that can be directly attributed to this Contract which is required to be maintained by Contractor under the Contract Documents. In the event Contractor elects to self insure against one or more risks associated with the Work, Contractor's cost of insurance for such risks shall be deemed to be the lowest guaranteed cost then available to Contractor under a fully insured program. ~~Contractor shall not be entitled to a Fee on insurance or bond costs. Contractor's Fee is fixed for any insurance or bond costs. Contractor's reimbursement for Liability and Builder's Risk Insurance and Payment and performance bonds shall be at the rates identified in Contractor's proposal and identified in Exhibit~~

7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work. ~~Contractor shall not be entitled to a Fee on taxes. Contractor's Fee is fixed.~~

7.6.3 As set forth in Exhibit B, fees ~~Fees~~ and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

7.6.4—Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Subparagraph 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Subparagraph 7.7.3.

7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by ~~the last sentence of Subparagraph 3.47.1 of AIA Document A201-1997 or other provisions of the Contract Documents,~~ then they shall not be included in the Cost of the Work.

7.6.6 Data processing costs related to the Work.

7.6.7 Deposits lost ~~for causes other than due to the Contractor's~~ Owner's negligence or Owner's failure to fulfill a specific responsibility ~~to the Owner~~ as set forth in the Contract Documents.

7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written

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approval; which approval shall not be unreasonably withheld.

7.6.9 ~~Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.~~

7.7 OTHER COSTS AND EMERGENCIES

7.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Paragraph 10.6 of AIA Document A201-1997 and provided that such emergency results from causes other than the fault, negligence, or breach of contract of Contractor, a Subcontractor, or someone for whom either may be responsible.

7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.

7.7.4 Costs incurred due to the default of Subcontractors or suppliers that are not recoverable from such Subcontractors or suppliers or such entities bond or surety company, provided that such default is not caused by the Contractor.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

8.1 The Cost of the Work shall not include any of the items set forth in this Article 8:

8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Subparagraphs 7.2.2 and 7.2.3, ~~or as may be provided in Article 14.~~

8.1.2 Expenses of the Contractor's principal office and offices other than the site office including, without limitation, the services of the Contractor's purchasing, estimating and accounting departments and clerical staff, sales, legal, labor relations, safety, insurance and tax departments, the cost of professional association membership and all other costs of doing business, services and related expense and overhead required or desired to maintain and operate such offices, except as set forth in Subparagraph 7.2.2 above.

8.1.3 Overhead (including unabsorbed or extended home office overhead and Eichleay - type damages), profit, and general expenses, except as may be expressly included in Article 7.

8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

8.1.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 7.5.2.

8.1.6 Except as provided in Subparagraphs 7.7.3 and 7.7.4 of this Agreement, costs ~~Costs~~ due to the negligence or ~~failure to fulfill a specific responsibility~~ of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, or costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, costs for any tests or inspections required and making good damage to property not forming part of the Work.

8.1.7 Any cost not specifically and expressly described in Article 7.

8.1.8 Costs, other than costs included in Change Orders approved by the Owner, for which the Contractor is responsible that

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would cause the Guaranteed Maximum Price to be exceeded.

8.1.9 Replacement or payment for lost or stolen machinery and equipment, except for amounts reimbursed by insurance provided by the Owner.

8.1.10 Cost of any gift to Contractors' or Subcontractor's employees and cost of any bonus, except as set forth in Subparagraph 7.2.1.

8.1.11 All moving costs associated with the relocation of Contractor personnel for the purpose of staffing the Project.

8.1.12 Cost of data processing incurred for this Project.

8.1.13 Any of Contractor's federal, state or local income taxes or franchise or personal or real property taxes or the cost of any licenses obtained for the general conduct of Contractor's business.

8.1.14 Losses and expenses that are reimbursable by insurance required to be maintained by the Contractor and Subcontractors under this Agreement or otherwise in effect.

8.1.15 Cost of labor and materials for Work related to completing punchlist items more than sixty (60) days after Substantial Completion and cost of performing warranty Work provided under this Agreement, except as specifically otherwise agreed by Owner and Contractor.

8.1.16 Any recoverable cost relating to the default of any Subcontractor or supplier.

8.1.17 Losses and expenses reimbursed to Contractor by a third party.

8.1.18 Overtime wages or salaries (and fringe benefits related thereto) incurred by Contractor as a result of Contractor's negligence, failure to perform the Work in a timely manner in accordance with the Construction Schedule, unless Contractor has received Owner's prior written consent to incur overtime.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured. The Contractor shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work prior to providing the Owner with seven (7) days prior written notice of the potential discount, rebate or refund on behalf of Owner in accordance with the requirements of this Paragraph 9.1.

9.2 Amounts that accrue to the Owner in accordance with the provisions of Paragraph 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. Without limiting Contractor's right to otherwise obtain bids, The Owner may designate specific persons or entities from whom the Contractor shall obtain bids. The Contractor shall obtain at least three (3) competitive bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect, Owner, unless Owner directs otherwise or Owner concurs in writing that competitive bidding is not practical. The Owner shall then determine, with the advice of the Contractor

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and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

10.2 If a specific bidder among those whose bids are delivered by the Contractor to the Architect Owner (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work in a timely and workmanlike manner; and (3) has submitted a bid that is not artificially or unreasonably low and that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then, unless the Owner has reasonable objection to the bidder and such bidder was not on an Owner-approved bid list, the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. All Subcontracts shall be competitively bid, and no tradework shall be performed by Contractor, or any entity related to or affiliated with Contractor, without Owner's express, written authorization. Contractor shall disclose to Owner, in writing whether Contractor, its officers, directors or any person related to them has an ownership interest in an proposed Subcontractor, Sub-Subcontractor, fabricator or supplier.

10.4 Value engineering or cost saving alternative proposals contained in any Contractor or Subcontractor bids must be set forth as alternates to the bid required by the Drawings and Specifications. Exhibit identifies the accepted Value engineering alternatives that are included in the GMP.

10.5 Except as otherwise agreed to in writing by the Owner and the Contractor, the Contractor shall competitively bid any trade Work that the Contractor wishes to perform with the Contractor's own labor, or through an Affiliate, and shall obtain no less than two (2) additional responsive bids (if possible) from responsible Subcontractors acceptable to the Owner. The Contractor, or an Affiliate, shall be permitted to perform such trade Work only if the Owner consents thereto in writing after full written disclosure by the Contractor to the Owner of the affiliation or relationship of such Affiliate to the Contractor and the Owner approves in writing any subcontract, contract, purchase order, agreement or other arrangement between the Contractor and such Affiliate in form and substance. The Contractor shall receive the applicable Contractor's Fee on trade Work performed with its own forces in addition to any profit and overhead included in the price accepted by the Owner for such trade Work. If an Affiliate is performing such Work, it shall do so under a subcontract meeting the requirements set forth herein and in the Contract Documents. The term "Affiliate" shall mean any party or entity related to or affiliated with the Contractor or in which the Contractor has a direct or indirect ownership or control, including without limitation: (x) any entity owned in whole or in part by the Contractor, (y) any party or entity with more than a ten percent (10%) interest in the Contractor, and (z) any entity in which any officer, director, management employee, partner or shareholder (or member of any such person's family) of the Contractor or any entity owned by the Contractor has a direct or indirect interest.

ARTICLE 11 ACCOUNTING RECORDS

Contractor shall check all materials, equipment and labor entering into the Work and Contractor shall keep full and detailed records and accounts and exercise such controls for proper business and financial management, in accordance with sound business practices and generally accepted accounting principles consistently applied, under this Contract; the accounting and control systems shall be satisfactory to Owner. Owner and Owner's authorized representatives and accountants shall be afforded access to, and the right to copy at Owner's expense, Contractor's estimates and take-offs prepared for this Project, records, books, accounts, data, daily logs, diaries, project records, correspondence, instructions, drawings, receipts, canceled checks, subcontracts, purchase orders, Project computer disks, vouchers, memoranda and other data relating to this Contract for the purpose of conducting reviews, examinations or audits, and Contractor shall preserve all such business and financial records for a period of three years after final payment, or for such longer period as may be required by law. To the extent Contractor keeps its business and accounting records on a computer system, Contractor shall provide Owner access to that system only for the purpose of assisting with any audit or for expediting the transfer of job costs and information to Owner's accounting system. The periods of access for records related to (i) litigation or the settlement of claims arising out of the performance of this Agreement or (ii) costs

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and expenses under this Agreement, exception to which have been taken by Owner or its authorized representatives, shall continue until such litigation, claim or exception has been resolved. The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

12.1 PROGRESS PAYMENTS

12.1.1 Based upon Applications for Payment and all required supporting documentation submitted to the Architect Owner by the Contractor and Certificates for Payment issued by the Architect and approved by the Owner, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

12.1.2 The period covered by each Application for Payment shall be one calendar month, ending on the last day of the month, or as follows:

12.1.3 The Owner and Contractor shall agree upon and establish the date upon which Contractor's monthly Application for Payment and the Pencil Draw (as defined below) shall be submitted, the time period which will be allowed for review of such by Owner, and the date upon which Owner's payment therefor shall be due; provided, however, Owner's payments shall be due (subject to Subparagraph 12.1.1) within thirty (30) days after Owner's receipt and approval of the complete and final Application for Payment. If a complete and final Application for Payment is received by the Owner and Civil Engineer after the application date established as set forth herein, payment shall be made by the Owner (subject to Subparagraph 12.1.1) not later than thirty (30) calendar days after the Owner approves the complete and final Application for Payment. Contractor acknowledges that payments due under this Agreement, shall not be made more frequently than on a monthly basis. Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than days after the Architect receives the Application for Payment.

12.1.3.1 Except as may be otherwise agreed by Owner, and Contractor, on the 25th day of the month, (or the next business day thereafter if the 25th is not a business day), the Owner and the Contractor shall meet to review a preliminary draft of the Application for Payment (hereinafter referred to as a "Pencil Draw") prepared by the Contractor. The Contractor shall revise the Pencil Draw in accordance with any objection or recommendation of either the Owner that is consistent with the requirements of the Contract Documents. Such revised Pencil Draw shall be resubmitted by the Contractor to the Owner as the Application for Payment, which application shall be due as set forth in Subparagraph 12.1.3 above. The Contractor shall also submit with each Application for Payment a written narrative describing the basis for any item set forth in the Application for Payment that does not conform to instructions of the Owner in connection with any applicable Pencil Draw.

12.1.4 With each Application for Payment, the Contractor shall submit such evidence as may be necessary to demonstrate costs incurred or to be incurred by him on account of the Cost of the Work during the period covered by the Application for Payment. In addition, the Contractor shall keep and make available to Owner upon the Owner's request payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Civil Engineer to demonstrate that disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to Contractor's Fee and General Conditions; plus (3) payrolls for the period covered by the present Application for Payment; plus (4) retainage provided in Subparagraph 12.1.8, if any, applicable to prior progress payments. In addition to other required items, such Application for Payment shall be accompanied by a duly executed and acknowledged Contractor's Sworn Statement showing all Subcontractors with whom the Contractor has entered into subcontracts, the amount of each subcontract, the amount requested for any Subcontractor in the Application for Payment and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all first-tier Subcontractors for whom payment is requested in such Application for Payment;

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waivers from Contractor and all Subcontractors in the forms attached hereto as Exhibit D; all invoices received from vendors; the certification set forth in Exhibit F or such other certifications as Owner may reasonably require; and such other information, documentation and materials as the Owner may reasonably require. With each Application for Payment, Contractor also shall provide copies of all Subcontractors' monthly applications for payment to substantiate Contractor's Application for Payment, payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values, attached hereto as Exhibit C and incorporated herein by this reference, shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee and Contingency Fund shall be shown as a single separate items. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect Owner may require. This schedule, unless objected to by the Architect Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Contractor's use of the Contingency Fund shall require the prior written approval of Owner.

12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may ~~shall~~ be included as provided in ~~Subparagraph 7.3.8 of AIA Document A201-1997.~~ General Conditions shall be billed as incurred over the duration of the Project;
- .2 add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 add the Contractor's Fee, two percent (2%), less retainage of ten percent (10 %). The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Subparagraph 5.1.2 ~~or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- .4 subtract the aggregate of previous payments made by the Owner;
- .5 subtract the shortfall, if any, indicated by the Contractor in the documentation required by the Contract Documents Paragraph 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .6 subtract amounts, if any, for which the Architect Owner has withheld or nullified a Certificate for Payment as provided

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in Paragraph 9.5 of AIA Document A201-1997 and other amounts properly held by the Owner and the time of each progress payment.

12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of not less than ten percent (10 %). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

12.1.9 In taking action on the Contractor's Applications for Payment, the ~~Architect~~ Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the ~~Architect~~ Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Subparagraph 12.1.4 or other supporting data; that the ~~Architect~~ Owner has made exhaustive or continuous on-site inspections or that the ~~Architect~~ Owner has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

12.1.10 The Owner will withhold from each progress payment an amount equal to ten percent (10%) of the amount due until the Work is finally complete ("Retainage"). Retainage shall be calculated on a line-by-line basis using the approved Schedule of Values attached hereto as Exhibit C. The aggregate of the Retainage shall be paid to Contractor as part of the Final Payment in accordance with Paragraph 12.2 herein. Retention shall not be withheld on Contractor's Fee and General Conditions.

12.1.11 For each progress payment, Contractor will deliver to Owner a complete and accurate invoice, AIA G702 and G703, for completed but unpaid Work for the then-current period, notarized and based upon the Work completed and accompanied by waivers (forms for which are attached hereto as Exhibit D), invoices from Subcontractors and suppliers (showing the full Subcontract amount and the amount billed for the current period) and other such documentation as Owner or Owner's lender may reasonably require and as otherwise may be set forth herein. At Owner's request, Contractor shall furnish with each Application for Payment a statement accounting for the disbursement of funds received from Owner, in a form reasonably acceptable to Owner.

12.1.12 Contractor will pay Subcontractors and suppliers all amounts approved by Owner in each Certificate for Payment within seven (7) days after receiving payment from Owner. Contractor will not withhold any sum paid to Contractor by Owner (in addition to the retainage withheld by Owner) from Subcontractors or suppliers because of disputes without first consulting with and gaining the approval of Owner. If Owner has paid Contractor and Contractor fails to make such timely payments of money rightly due to Subcontractors and suppliers, Owner, at its sole election, may directly pay the Subcontractors and suppliers and such payments shall be deemed to be payments to Contractor under this Contract. The Owner's right to elect to make direct payments shall not give rise to an obligation for the Owner to do so for the benefit of Contractor, a Subcontractor, or anyone else.

12.1.13 Progress payments will not constitute acceptance by Owner of such Work in place or stored materials, nor will these payments be construed as a waiver of any right or claim by Owner regarding such Work or stored materials.

12.1.14 In addition to the requirements set forth elsewhere in the Contract Documents, progress payments shall not be due until the following conditions have been achieved.

- (1) The Contractor has submitted a complete, correct and sworn Application for Payment in an Owner-approved format showing all money paid out and costs incurred to the date indicated in the Application for Payment;
- (2) The Contractor has submitted an executed subcontract for each Subcontractor and supplier requesting payment;
- (3) The Contractor has submitted, on forms attached hereto as Exhibit D or other forms acceptable to the Owner, conditional waivers and releases for the amount of the current request and unconditional waivers and releases for the total amount of payments to date for the Contractor, Subcontractors and suppliers;

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(4) The Contractor has submitted a certification that all Work has been performed in accordance with the requirements of the Contract Documents;

(5) The Owner has approved the Application for Payment, which approval shall not be unreasonably withheld; and

(6) The Contractor's monthly update to the Schedule has been provided and accepted by the Owner.

12.1.15 Owner shall not be obligated to perform any act under this Contract as to which the surety under the performance bond maintained by Contractor (the "Surety") demands its consent until Contractor has provided Owner with a written consent therefor from the Surety.

12.2 FINAL PAYMENT

12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor (subject to Subparagraph 12.1.1) when the following conditions have been satisfied:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in ~~Subparagraph 12.2.2~~ of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the ~~Architect~~ Civil Engineer and approved by Owner in writing;:
- .3 a final Application for Payment and a final accounting for the Cost of the Work and all required supporting documentation have been submitted by the Contractor and reviewed by the Owner's accountants; and
- .4 all conditions to final payment set forth in the Contract Documents have been satisfied.

12.2.2 ~~The Subject to Subparagraph 12.1.1, the~~ Owner's final payment to the Contractor shall be made no later than thirty (30) days after the issuance of the ~~Architect's Civil Engineer's~~ final Certificate for Payment, ~~approval thereof by Owner, and satisfaction of and conditions to final payment. - or as follows:~~

12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within ~~thirty~~ 30 days after delivery of the final accounting to the ~~Architect~~ Owner by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions for final payment set forth in the Contract Documents of ~~Subparagraph 12.2.1~~ have been met, the ~~Architect Civil Engineer~~ will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the ~~Architect's Civil Engineer's~~ reasons for withholding a certificate as provided in ~~Subparagraph 9.5.1~~ of the AIA Document A201-1997. The time periods stated in this Subparagraph 12.2.3 supersede those stated in ~~Subparagraph 9.4.1~~ of the AIA Document A201-1997.

12.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to ~~initiate a claim in accordance with the dispute resolution provision of this Contract regarding demand arbitration~~ of the disputed amount without a further decision of the ~~Architect~~ Owner. Such ~~claim demand for arbitration~~ shall be ~~initiated made~~ by the Contractor within thirty (30) days after the Contractor's receipt of a copy of the ~~Architect's Civil Engineer's~~ final Certificate for Payment; failure to ~~initiate such claim demand arbitration~~ within this 30-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution ~~by of the claim, arbitration~~, the Owner shall pay the Contractor the amount certified in the ~~Architect's Civil Engineer's~~ final Certificate for Payment and approved by Owner.

12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the

Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Paragraph 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

ARTICLE 13 TERMINATION OR SUSPENSION

13.1 The Contract may be terminated by the Contractor, ~~or by the Owner for convenience,~~ as provided in Article 14 of AIA Document A201-1997. ~~However, the amount to be paid to the Contractor under Subparagraph 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Paragraph 13.2 below, except that the Contractor's Fee shall be calculated as if the Work had been fully completed by the Contractor, including a reasonable estimate of the Cost of the Work for Work not actually completed.~~

13.2 The Contract may be terminated by the Owner ~~for cause~~ as provided in Article 14 of AIA Document A201-1997. ~~The amount, if any, to be paid to the Contractor under Subparagraph 14.2.4 of AIA Document A201-1997 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:~~

13.2.1 Upon termination of this Contract, Contractor shall execute and deliver all such papers and documents, and take all such steps, including the legal assignment of any or all subcontracts, as Owner may require. Take the Cost of the Work incurred by the Contractor to the date of termination;

13.2.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Subparagraph 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

13.2.3 Subtract the aggregate of previous payments made by the Owner.

13.3 ~~The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Subparagraph 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.~~

13.4 ~~The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Subparagraph 14.3.2 of AIA Document A201-1997 except that the term "profit" shall be understood to mean the Contractor's Fee as described in Subparagraphs 5.1.2 and Paragraph 6.4 of this Agreement.~~

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by the parties in writing and by other provisions of the Contract Documents.

14.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

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The prime rate as set forth in The Wall Street Journal plus one percent (1%) per annum as stated from time to time calculated daily.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

14.3 The Owner's representative is:
(Name, address and other information.)

As described in Paragraph 3.1.

14.4 The Contractor's representative is: Andrew Linden
(Name, address and other information.)

[Insert]

14.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

14.6 Other provisions:

14.6.1 DISPUTE RESOLUTION

14.6.1.1 See Paragraph 4.6 of the General Conditions.

14.6.1.2 This Agreement will be construed and interpreted according to the substantive laws of the State of Maryland, without regard to the choice of law/conflict of laws provisions thereof. In the event of any litigation filed in connection with this Contract or the Project, the parties consent to exclusive venue in and personal jurisdiction in the Circuit Court for Montgomery County, Maryland.

14.6.2 In the event of any dispute between Owner and Contractor, Contractor agrees that it shall only assert its claim against Owner. Notwithstanding anything to the contrary contained in any other provision of this Agreement, the Owner's directors, officers, agents or employees of any of them shall not have any personal liability under this Contract for any obligation at any time, it being understood that Contractor shall look solely to the assets of Owner for the satisfaction of any claim Contractor has against Owner, its directors, officers, agents or employees of any of them.

14.6.3 The Contractor agrees that all knowledge and information not already considered within the public domain which the Contractor may acquire from the Owner or its officers, staff, agents, or other contractors of the Owner, or by virtue of the performance of the Work hereunder, will for all time and for all purposes be regarded by the Contractor as strictly confidential and held by the Contractor in confidence, and solely for the Owner's benefit and use, and will not be directly or indirectly disclosed by the Contractor to any person or entity whatsoever except with the Owner's prior written permission. The Contractor will hold confidential and not disclose to others, information not already within the public domain provided by the Contractor to the Owner. The foregoing nondisclosure obligation will not be applicable to any disclosure required to enable the Contractor to perform its services hereunder or to comply with applicable law.

14.6.4 Contractor shall review all reports and information provided to it by Owner, and if such reports or information are recognized as incomplete or if Contractor needs any additional information to provide its services, Contractor shall promptly notify Owner in writing. The Owner's review and/or approval of any documents provided or service performed by Contractor or anyone for whom Contractor may be responsible shall not relieve Contractor of its responsibilities under this Agreement or under applicable law., ~~and Contractor specifically waives any right to assert a claim against Owner or to assert a defense to any claim by the Owner against Contractor because of Owner's review and/or approval of any documents provided or services performed by Contractor or anyone for whom Contractor may be responsible.~~

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14.6.5 Within thirty (30) days after execution of the Agreement, the Contractor shall prepare for the Owner's review, and the Contractor shall use, a plan for efficient and effective use of the Project site and for secure storage of materials and equipment by the Contractor any and/or all Subcontractors.

14.6.6 The Contractor warrants that all manufacturers or other warranties on all materials and equipment furnished by the Contractor shall run directly to or be specifically assigned to the Owner and that if ~~a manufacturer alleges that~~ a warranty is ineffective because the material or equipment is ~~alleged to be~~ defectively installed, the Contractor shall be responsible to the Owner for the defective installation.

14.6.7 The Contractor has provided the Owner a list, attached hereto and incorporated herein as Exhibit E, of the names, resumes, relevant experience and estimated term of assignment of all personnel of the positions of superintendent and above who shall perform the Work ("Supervisory Personnel"). The Contractor shall inform the Owner in writing, of the estimated period of construction under each such person's supervision. None of these Supervisory Personnel shall be removed from the Project without the Owner's Representative's consent, and the Owner's Representative shall have the authority to approve or reject the Supervisory Personnel and any replacements.

14.6.8 This Agreement may be executed in multiple counterparts, each of which will be deemed an original agreement and all of which together will constitute one agreement.

14.6.9 This Agreement is a negotiated document, and in the event of any dispute between the parties, this Agreement will not be construed against either party by virtue of the fact that the party may have prepared it.

14.6.10 By executing this Contract, as well as each Modification to this Contract, the Contractor certifies to the following:

1. The price contained in this Contract, as well as in each Modification to this Contract has been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition as to any matter relating to such prices with any other bidder for this Project or with any competitor of the Contractor;
2. The prices which have been quoted in this Contract, as well as in each Modification to this Contract, have not been knowingly disclosed prior to bid opening to any other bidder or competitor; and
3. No attempt was made by the Contractor to induce any other person, partnership, corporation or other entity to submit or not to submit a bid on this Project.

14.6.11 If any term or provision of this Agreement, or the application thereof to any person or circumstances, shall be invalid or unenforceable to any extent, the remainder of this Agreement or the application of this Agreement to persons or circumstances other than those against whom or which such term or provision is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permissible by law.

14.6.12 FINANCING REQUIREMENTS

14.6.12.1 The Contractor shall provide to the Owner any Project information or certification that the Owner reasonably requires.

14.6.12.2 The Contractor agrees to execute such documents as may be reasonably required by the Owner, including, but not limited to, a consent to assignment of this Agreement. The Contractor also shall agree to such modifications to this Agreement as the Lender may reasonably require, provided the Contractor's costs or time of performance are not increased, unless this Agreement is equitably adjusted.

14.6.12.3 Contractor acknowledges that Owner may be required to provide evidence to others that the Project was completed in accordance with the Contract Documents and to the best of the Contractor's knowledge in compliance with all applicable environmental and other laws, rules, codes and regulations bearing on the performance of the Work. Upon request by the Owner, Contractor shall provide the Owner and/or others designated by the Owner with a certification of compliance to such effect.

14.6.13 OSHA COMPLIANCE. The Contractor shall comply, and shall bind any Subcontractor who enters the site to comply, with the Occupational Safety and Health Act of 1970 and all standards and regulations issued pursuant thereto (the "Act"). The Contractor agrees, and shall bind any such Subcontractor to agree, to indemnify and to save the Owner harmless from any loss, damage, fine penalty or expense whatsoever (including, without limitation, attorneys' fees and court costs) that the Owner may suffer as a result of the failure or alleged failure of the Contractor or its Subcontractors to comply with the requirements of the Act.

14.6.14 EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION. The contractor represents that it and its Subcontractors are equal opportunity employers as described in Section 202 of Executive Order No. 11246 dated September 24, 1965, as amended, and it agrees that it and its Subcontractors will comply with the provisions of said Executive Order during the performance of this Contract.

14.6.15 Contractor acknowledges that Owner is subject to the easements listed in Exhibit hereto (the "Construction Easements"). Contractor agrees that it will perform the Work in accordance with the Construction Easements, including but not limited to the notice, tie-back, underpinning, crane swing, and other construction-related provisions thereof. In no event will Contractor perform an act that violates or causes a default under the Construction Easements. Notwithstanding the foregoing, in the event a Construction Easement set forth in Exhibit is terminated according to the provisions thereof as a result of circumstances other than the Contractor's fault, the Contractor may seek an equitable adjustment to the Guaranteed Maximum Price to reflect additional costs, if any, resulting from that termination. The referenced Exhibit will be provided to Contractor as soon as possible after execution of this Agreement.

14.6.16 Contractor acknowledges that the Owner's development of the Project is subject to certain Board of Zoning Appeals rulings dated (together, the "Zoning Conditions"). Copies of the Zoning Conditions are attached as Exhibit L hereto. Contractor agrees that it shall perform the Work in accordance with the construction related Zoning Conditions, including but not limited to complying with any notice provisions therein. In no event will Contractor perform an act that violates the construction related Zoning Conditions. Contractor shall have no responsibility for design related errors or omissions that are found to violate the Zoning Conditions. The referenced Zoning Conditions will be provided to Contractor as soon as possible after execution of this Agreement.

14.6.17 All matters that relate to the termination or expiration of this Agreement, or that in the normal course would not occur or be effectuated until after such termination or expiration, or that by their nature should be expected to continue after termination or expiration of this Agreement, as well as all rights and obligations of the parties pertaining thereto, will survive any termination or expiration of this Agreement and will be given full force and effect notwithstanding any termination or expiration of this Agreement, but such survival will not operate to extend any applicable statute of limitations.

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

15.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A111-1997, as modified.

15.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997, as modified, appearing as Exhibit G hereto. All references herein to AIA Document A201-1997 shall mean the modified document appearing as Exhibit G.

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15.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated _____, and are as follows:

Document	Title	Pages
----------	-------	-------

15.1.4 The Specifications are those listed in Exhibit M hereto, including but not limited to [the specifications listed in the General Conditions and Instructions to Bidder.] contained in the Project Manual dated as in Subparagraph 15.1.3, and are as follows:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
---------	-------	-------

15.1.5 The Drawings are those listed in Exhibit M hereto, as follows, and are dated unless a different date is shown below:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
--------	-------	------

15.1.6 The Addenda, if any, are those listed in Exhibit M hereto, as follows:

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 15.

15.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents, such as a list of alternates that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

All Exhibits hereto and documents referenced therein including the following Exhibits

1. WT Letter of June 29, 2004, specifying initial scope of work under this Agreement.
2. Listing of Drawings and Specifications;
3. OCIP Provisions (to be added);
4. WT OCIP Contract Language (to be added);
5. Schedule of Values;
6. GC Scope and Billing Schedules;
7. Labor Rates/Insurance Rates/Bond Rates;
8. GMP Assumptions and Clarifications;
9. Project Schedules;
10. List of documents provided to Contractor.

ARTICLE 16 INSURANCE AND BONDS

(List required limits of liability for insurance and bonds. AIA Document A201-1997 gives other specific requirements for insurance and bonds.)

The Contractor shall provide performance and payment bonds. See General Conditions Paragraph 11.5.

The Contractor shall provide insurance. See General Conditions Article 11.

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This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

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This document is not intended for use in competitive bidding.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by The Associated General Contractors of America.

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General Conditions of the Contract for Construction

AIA Document A201 - 1997
1997 Edition - Electronic Format

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TABLE OF ARTICLES

1. GENERAL PROVISIONS
2. OWNER
3. CONTRACTOR
4. ADMINISTRATION OF THE CONTRACT
5. SUBCONTRACTORS
6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7. CHANGES IN THE WORK
8. TIME
9. PAYMENTS AND COMPLETION
10. PROTECTION OF PERSONS AND PROPERTY
11. INSURANCE AND BONDS
12. UNCOVERING AND CORRECTION OF WORK
13. MISCELLANEOUS PROVISIONS
14. TERMINATION OR SUSPENSION OF THE CONTRACT

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Electronic Format A201-1997

INDEX

Acceptance of Nonconforming Work

9.6.6, 9.9.3, 12.3

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

4.2.3, 10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 4.3.8, 4.4.1, 8.3.1, 9.5.1, 10.2.5, 13.4.2, 13.7, 14.1

Addenda

1.1.1, 3.11

Additional Costs, Claims for

4.3.4, 4.3.5, 4.3.6, 6.1.1, 10.3

Additional Inspections and Testing

9.8.3, 12.2.1, 13.5

Additional Time, Claims for

4.3.4, 4.3.7, 8.3.2

ADMINISTRATION OF THE CONTRACT

3.1.3, 4, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13, 4.5.1

Allowances

3.8

All-risk Insurance

11.4.1.1

Applications for Payment

4.2.5, 7.3.8, 9.2, 9.3, 9.4, 9.5.1, 9.6.3, 9.7.1, 9.8.5, 9.10, 11.1.3, 14.2.4, 14.4.3

Approvals

2.4, 3.1.3, 3.5, 3.10.2, 3.12, 4.2.7, 9.3.2, 13.4.2, 13.5

Arbitration

4.3.3, 4.4, 4.5.1, 4.5.2, 4.6, 8.3.1, 9.7.1, 11.4.9, 11.4.10

Architect

4.1

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.4, 3.12.7, 4.2, 4.3.6, 4.4, 5.2, 6.3, 7.1.2, 7.3.6, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.8.3, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4

Architect, Limitations of Authority and Responsibility

2.1.1, 3.3.3, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 4.4, 5.2.1, 7.4, 9.4.2, 9.6.4, 9.6.6

Architect's Additional Services and Expenses

2.4, 11.4.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 4.2, 4.3.4, 4.4, 9.4, 9.5

Architect's Approvals

2.4, 3.1.3, 3.5.1, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5.1, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.6

Architect's Decisions

4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.3.4, 4.4.1, 4.4.5, 4.4.6, 4.5, 6.3, 7.3.6, 7.3.8, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4

Architect's Inspections

4.2.2, 4.2.9, 4.3.4, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

Architect's Instructions

3.2.3, 3.3.1, 4.2.6, 4.2.7, 4.2.8, 7.4.1, 12.1, 13.5.2

Architect's Interpretations

4.2.11, 4.2.12, 4.3.6

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.6, 3.1.3, 3.2.1, 3.2.2, 3.2.3, 3.3.1, 3.4.2, 3.5.1, 3.7.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 4.3.4, 4.4.1, 4.4.7, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 11.4.7, 12, 13.4.2, 13.5

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.4.7

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

4.2.2, 4.2.5, 4.2.9, 4.3.4, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1, 1.1.7, 5.2.1, 11.5.1

Boiler and Machinery Insurance

11.4.2

Bonds, Lien

9.10.2

Bonds, Performance, and Payment

7.3.6.4, 9.6.7, 9.10.3, 11.4.9, 11.5

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

Certificates of Inspection, Testing or Approval

13.5.4

Certificates of Insurance

9.10.2, 11.1.3

Change Orders

1.1.1, 2.4.1, 3.4.2, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8, 4.3.4, 4.3.9, 5.2.3, 7.1, 7.2, 7.3, 8.3.1, 9.3.1.1, 9.10.3, 11.4.1.2, 11.4.4, 11.4.9, 12.1.2

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

3.11, 4.2.8, **7**, 8.3.1, 9.3.1.1, 11.4.9

Claim, Definition of

4.3.1

Claims and Disputes

3.2.3, **4.3**, 4.4, 4.5, 4.6, 6.1.1, 6.3, 7.3.8, 9.3.3, 9.10.4, 10.3.3

Claims and Timely Assertion of Claims

4.6.5

Claims for Additional Cost

3.2.3, 4.3.4, **4.3.5**, 4.3.6, 6.1.1, 7.3.8, 10.3.2

Claims for Additional Time

3.2.3, 4.3.4, **4.3.7**, 6.1.1, 8.3.2, 10.3.2

Claims for Concealed or Unknown Conditions

4.3.4

Claims for Damages

3.2.3, 3.18, 4.3.10, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.4.5, 11.4.7, 14.1.3, 14.2.4

Claims Subject to Arbitration

4.4.1, 4.5.1, 4.6.1

Cleaning Up

3.15, 6.3

Commencement of Statutory Limitation Period

13.7

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.1, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 4.3.5, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.4.1, 11.4.6, 11.5.1

Commencement of the Work, Definition of

8.1.2

Communications Facilitating Contract Administration

3.9.1, **4.2.4**

Completion, Conditions Relating to

1.6.1, 3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2

COMPLETION, PAYMENTS AND

9

Completion, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 9.10.4.2,

12.2, 13.7

Compliance with Laws

1.6.1, 3.2.2, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 4.4.8, 4.6.4, 4.6.6, 9.6.4, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3

Concealed or Unknown Conditions

4.3.4, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 1.1.7, 6.1.1, 6.1.4

Consent, Written

1.6, 3.4.2, 3.12.8, 3.14.2, 4.1.2, 4.3.4, 4.6.4, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, **6**

Construction Change Directive, Definition of

7.3.1

Construction Change Directives

1.1.1, 3.12.8, 4.2.8, 4.3.9, 7.1, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

1.4.1.2, 3.10, 3.12.1, 3.12.2, 4.3.7.2, 6.1.3

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

4.3.3

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 11.4.9, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.4.6, 11.5.1

Contract Documents, The

1.1, 1.2

Contract Documents, Copies Furnished and Use of

1.6, 2.2.5, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

3.8, 4.3.4, 4.3.5, 4.4.5, 5.2.3, 7.2, 7.3, 7.4, **9.1**, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.4.1, 14.2.4, 14.3.2

Contract Sum, Definition of

9.1

Contract Time

4.3.4, 4.3.7, 4.4.5, 5.2.3, 7.2.1.3, 7.3, 7.4, 8.1.1, 8.2, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, 6.1.2

Contractor's Construction Schedules	12.1, 12.2.1, 12.2.4, 13.5, 14
1.4.1.2, 3.10 , 3.12.1, 3.12.2, 4.3.7.2, 6.1.3	Cutting and Patching
Contractor's Employees	6.2.5, 3.14
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3,	Damage to Construction of Owner or Separate Contractors
11.1.1, 11.4.7, 14.1, 14.2.1.1,	3.14.2, 6.2.4, 9.2.1.5, 10.2.1.2, 10.2.5, 10.6, 11.1, 11.4,
Contractor's Liability Insurance	12.2.4
11.1	Damage to the Work
Contractor's Relationship with Separate Contractors and Owner's	3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.6, 11.4, 12.2.4
Forces	Damages, Claims for
3.12.5, 3.14.2, 4.2.4, 6, 11.4.7, 12.1.2, 12.2.4	3.2.3, 3.18, 4.3.10, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1,
Contractor's Relationship with Subcontractors	11.4.5, 11.4.7, 14.1.3, 14.2.4
1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.4.1.2,	Damages for Delay
11.4.7, 11.4.8	6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2
Contractor's Relationship with the Architect	Date of Commencement of the Work, Definition of
1.1.2, 1.6, 3.1.3, 3.2.1, 3.2.2, 3.2.3, 3.3.1, 3.4.2, 3.5.1, 3.7.3,	8.1.2
3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 4.3.4, 4.4.1,	Date of Substantial Completion, Definition of
4.4.7, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, .5, 9.7, 9.8, 9.9,	8.1.3
10.2.6, 10.3, 11.3, 11.4.7, 12, 13.4.2, 13.5	Day, Definition of
Contractor's Representations	8.1.4
1.5.2, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2	Decisions of the Architect
Contractor's Responsibility for Those Performing the Work	4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.3.4, 4.4.1, 4.4.5, 4.4.6,
3.3.2, 3.18, 4.2.3, 4.3.8, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10	4.5, 6.3, 7.3.6, 7.3.8, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4,
Contractor's Review of Contract Documents	9.9.1, 13.5.2, 14.2.2, 14.2.4
1.5.2, 3.2, 3.7.3	Decisions to Withhold Certification
Contractor's Right to Stop the Work	9.4.1, 9.5 , 9.7, 14.1.1.3
9.7	Defective or Nonconforming Work, Acceptance, Rejection and
Contractor's Right to Terminate the Contract	Correction of
4.3.10, 14.1	2.3, 2.4, 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3,
Contractor's Submittals	9.10.4, 12.2.1, 13.7.1.3
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.6, 9.2, 9.3, 9.8.2,	Defective Work, Definition of
9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.5.2	3.5.1
Contractor's Superintendent	Definitions
3.9, 10.2.6	1.1, 2.1.1, 3.1, 3.5.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 4.3.1, 5.1,
Contractor's Supervision and Construction Procedures	6.1.2, 7.2.1, 7.3.1, 7.3.6, 8.1, 9.1, 9.8.1
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 4.3.3, 6.1.3, 6.2.4,	Delays and Extensions of Time
7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14	3.2.3, 4.3.1, 4.3.4, 4.3.7, 4.4.5, 5.2.3, 7.2.1, 7.3.1, 7.4.1,
Contractual Liability Insurance	7.5.1, 8.3 , 9.5.1, 9.7.1, 10.3.2, 10.6.1, 14.3.2
11.1.1.8, 11.2, 11.3	Disputes
Coordination and Correlation	4.1.4, 4.3, 4.4, 4.5, 4.6, 6.3, 7.3.8
1.2, 1.5.2, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1	Documents and Samples at the Site
Copies Furnished of Drawings and Specifications	3.11
1.6, 2.2.5, 3.11	Drawings, Definition of
Copyrights	1.1.5
1.6, 3.17	Drawings and Specifications, Use and Ownership of
Correction of Work	1.1.1, 1.3, 2.2.5, 3.11, 5.3
2.3, 2.4, 3.7.4, 4.2.1, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2,	Effective Date of Insurance
13.7.1.3	8.2.2, 11.1.2
Correlation and Intent of the Contract Documents	Emergencies
1.2	4.3.5, 10.6 , 14.1.1.2
Cost, Definition of	Employees, Contractor's
7.3.6	3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3,
Costs	11.1.1, 11.4.7, 14.1, 14.2.1.1
2.4, 3.2.3, 3.7.4, 3.8.2, 3.15.2, 4.3, 5.4.2, 6.1.1, 6.2.3,	Equipment, Labor, Materials and
7.3.3.3, 7.3.6, 7.3.7, 7.3.8, 9.10.2, 10.3.2, 10.5, 11.3, 11.4,	

1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.6, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.2

Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3, 3.4, 3.5, 3.7, 3.10, 3.12, 3.14, 4.2.2, 4.2.3, 4.3.3, 6.2.2, 7.1.3, 7.3.4, 8.2, 9.5, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3

Extensions of Time
3.2.3, 4.3.1, 4.3.4, 4.3.7, 4.4.5, 5.2.3, 7.2.1, 7.3, 7.4.1, 9.5.1, 9.7.1, 10.3.2, 10.6.1, 14.3.2

Failure of Payment
4.3.6, 9.5.1.3, **9.7**, 9.10.2, 14.1.1.3, 14.2.1.2, 13.6

Faulty Work
(See Defective or Nonconforming Work)

Final Completion and Final Payment
4.2.1, 4.2.9, 4.3.2, 9.8.2, **9.10**, 11.1.2, 11.1.3, 11.4.1, 11.4.5, 12.3.1, 13.7, 14.2.4, 14.4.3

Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.5

Fire and Extended Coverage Insurance
11.4

GENERAL PROVISIONS
1

Governing Law
13.1

Guarantees (See Warranty)

Hazardous Materials
10.2.4, **10.3**, 10.5

Identification of Contract Documents
1.5.1

Identification of Subcontractors and Suppliers
5.2.1

Indemnification
3.17, **3.18**, 9.10.2, 10.3.3, 10.5, 11.4.1.2, 11.4.7

Information and Services Required of the Owner
2.1.2, **2.2**, 3.2.1, 3.12.4, 3.12.10, 4.2.7, 4.3.3, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4

Injury or Damage to Person or Property
4.3.8, 10.2, 10.6

Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5

Instructions to Bidders
1.1.1

Instructions to the Contractor
3.2.3, 3.3.1, 3.8.1, 4.2.8, 5.2.1, 7.12, 8.2.2, 13.5.2

Insurance
3.18.1, 6.1.1.1, 7.3.6, 8.2.1, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 9.10.5, 11

Insurance, Boiler and Machinery
11.4.2

Insurance, Contractor's Liability

11.1

Insurance, Effective Date of
8.2.2, 11.1.2

Insurance, Loss of Use
11.4.3

Insurance, Owner's Liability
11.2

Insurance, Project Management Protective Liability
11.3

Insurance, Property
10.2.5, **11.4**

Insurance, Stored Materials
9.3.2, 11.4.1.4

INSURANCE AND BONDS
11

Insurance Companies, Consent to Partial Occupancy
9.9.1, 11.4.1.5

Insurance Companies, Settlement with
11.4.10

Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4

Interest
13.6

Interpretation
1.2.3, **1.4**, 4.1.1, 4.3.1, 5.1, 6.1.2, 8.1.4

Interpretations, Written
4.2.11, 4.2.12, 4.3.6

Joinder and Consolidation of Claims Required
4.6.4

Judgment on Final Award
4.6.6

Labor and Materials, Equipment
1.1.3, 1.1.6, **3.4**, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.6, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.2

Labor Disputes
8.3.1

Laws and Regulations
1.6, 3.2.2, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 4.4.8, 4.6, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14

Liens
2.1.2, 4.4.8, 8.2.2, 9.3.3, 9.10

Limitation on Consolidation or Joinder
4.6.4

Limitations, Statutes of
4.6.3, 12.2.6, 13.7

Limitations of Liability
2.3, 3.2.1, 3.5.1, 3.7.3, 3.12.8, 3.12.10, 3.17, 3.18, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.10.4, 10.3.3, 10.2.5, 11.1.2, 11.2.1, 11.4.7, 12.2.5, 13.4.2

Limitations of Time
2.1.2, 2.2, 2.4, 3.2.1, 3.7.3, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 4.3, 4.4, 4.5, 4.6, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3,

11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14
 Loss of Use Insurance
11.4.3
 Material Suppliers
 1.6, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5
 Materials, Hazardous
 10.2.4, 10.3, 10.5
 Materials, Labor, Equipment and
 1.1.3, 1.1.6, 1.6.1, 3.4, 3.5.1, 3.8.2, 3.8.23, 3.12, 3.13,
 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.6, 9.3.2, 9.3.3, 9.5.1.3,
 9.10.2, 10.2.1, 10.2.4, 14.2.1.2
 Means, Methods, Techniques, Sequences and Procedures of
 Construction
 3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
 Mechanic's Lien
 4.4.8
 Mediation
 4.4.1, 4.4.5, 4.4.6, 4.4.8, **4.5**, 4.6.1, 4.6.2, 8.3.1, 10.5
 Minor Changes in the Work
 1.1.1, 3.12.8, 4.2.8, 4.3.6, 7.1, 7.4
MISCELLANEOUS PROVISIONS
 13
 Modifications, Definition of
 1.1.1
 Modifications to the Contract
 1.1.1, 1.1.2, 3.7.3, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7,
 10.3.2, 11.4.1
 Mutual Responsibility
6.2
 Nonconforming Work, Acceptance of
 9.6.6, 9.9.3, **12.3**
 Nonconforming Work, Rejection and Correction of
 2.3, 2.4, 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.8.2, 9.9.3, 9.10.4,
 12.2.1, 13.7.1.3
 Notice
 2.2.1, 2.3, 2.4, 3.2.3, 3.3.1, 3.7.2, 3.7.4, 3.12.9, 4.3, 4.4.8,
 4.6.5, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 11.1.3, 11.4.6, 12.2.2,
 12.2.4, 13.3, 13.5.1, 13.5.2, 14.1, 14.2
 Notice, Written
 2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 4.3, 4.4.8, 4.6.5, 5.2.1,
 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4,
13.3, 14
 Notice of Testing and Inspections
 13.5.1, 13.5.2
 Notice to Proceed
 8.2.2
 Notices, Permits, Fees and
 2.2.2, **3.7**, 3.13, 7.3.6.4, 10.2.2
 Observations, Contractor's
 1.5.2, 3.2, 3.7.3, 4.3.4
 Occupancy
 2.2.2, 9.6.6, 9.8, 11.4.1.5
 Orders, Written

1.1.1, 2.3, 3.9, 4.3.6, 7, 8.2.2, 11.4.9, 12.1, 12.2, 13.5.2,
 14.3.1
OWNER
2
 Owner, Definition of
 2.1
 Owner, Information and Services Required of the
 2.1.2, **2.2**, 3.2.1, 3.12.4, 3.12.10, 4.2.7, 4.3.3, 6.1.3, 6.1.4,
 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4,
 13.5.1, 13.5.2, 14.1.1.4, 14.1.4
 Owner's Authority
 1.6, 2.1.1, 2.3, 2.4, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3,
 4.2.4, 4.2.9, 4.3.6, 4.4.7, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1,
 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.9.1, 9.10.2, 10.3.2,
 11.1.3, 11.3.1, 11.4.3, 11.4.10, 12.2.2, 12.3.1, 13.2.2, 14.3,
 14.4
 Owner's Financial Capability
 2.2.1, 13.2.2, 14.1.1.5
 Owner's Liability Insurance
11.2
 Owner's Loss of Use Insurance
 11.4.3
 Owner's Relationship with Subcontractors
 1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
 Owner's Right to Carry Out the Work
2.4, 12.2.4, 14.2.2.2
 Owner's Right to Clean Up
6.3
 Owner's Right to Perform Construction and to Award Separate
 Contracts
6.1
 Owner's Right to Stop the Work
2.3
 Owner's Right to Suspend the Work
 14.3
 Owner's Right to Terminate the Contract
 14.2
 Ownership and Use of Drawings, Specifications and Other
 Instruments of Service
 1.1.1, **1.6**, 2.2.5, 3.2.1, 3.11.1, 3.17.1, 4.2.12, 5.3
 Partial Occupancy or Use
 9.6.6, **9.9**, 11.4.1.5
 Patching, Cutting and
3.14, 6.2.5
 Patents
 3.17
 Payment, Applications for
 4.2.5, 7.3.8, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7.1, 9.8.5, 9.10.1,
 9.10.3, 9.10.5, 11.1.3, 14.2.4, 14.4.3
 Payment, Certificates for
 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1,
 9.10.3, 13.7, 14.1.1.3, 14.2.4
 Payment, Failure of

4.3.6, 9.5.1.3, **9.7**, 9.10.2, 14.1.1.3, 14.2.1.2, 13.6
Payment, Final
4.2.1, 4.2.9, 4.3.2, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1,
11.4.5, 12.3.1, 13.7, 14.2.4, 14.4.3
Payment Bond, Performance Bond and
7.3.6.4, 9.6.7, 9.10.3, 11.4.9, **11.5**
Payments, Progress
4.3.3, 9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3

PAYMENTS AND COMPLETION

9

Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 11.4.8, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond
7.3.6.4, 9.6.7, 9.10.3, 11.4.9, **11.5**

Permits, Fees and Notices

2.2.2, 3.7, 3.13, 7.3.6.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of
3.12.2

Product Data and Samples, Shop Drawings
3.11, **3.12**, 4.2.7

Progress and Completion

4.2.2, 4.3.3, **8.2**, 9.8, 9.9.1, 14.1.4

Progress Payments

4.3.3, 9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3

Project, Definition of the

1.1.4

Project Management Protective Liability Insurance
11.3

Project Manual, Definition of the
1.1.7

Project Manuals
2.2.5

Project Representatives
4.2.10

Property Insurance
10.2.5, 11.4

PROTECTION OF PERSONS AND PROPERTY

10

Regulations and Laws

1.6, 3.2.2, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 4.4.8, 4.6, 9.6.4,
9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14

Rejection of Work

3.5.1, 4.2.6, 12.2.1

Releases and Waivers of Liens
9.10.2

Representations

1.5.2, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2,

9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.10, 5.1.1, 5.1.2, 13.2.1

Resolution of Claims and Disputes

4.4, 4.5, 4.6

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.3, 4.3.8, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field Conditions by
Contractor

1.5.2, **3.2**, 3.7.3, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by
Contractor

3.12

Rights and Remedies

1.1.2, 2.3, 2.4, 3.5.1, 3.15.2, 4.2.6, 4.3.4, 4.5, 4.6, 5.3, 5.4,
6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4,
13.4, 14

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

4.6.2

Safety of Persons and Property

10.2, 10.6

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3.1, **10.1**, 10.2, 10.6

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, **3.12**, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

1.4.1.2, 3.10, 3.12.1, 3.12.2, 4.3.7.2, 6.1.3

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 4.6.4, 6, 8.3.1, 11.4.7,
12.1.2, 12.2.5

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, **3.12**, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

1.2.2, 3.2.1, 3.3.3, 3.7.1, 4.2, 4.3.4, 9.4.2, 9.10.1, 13.5

Site Visits, Architect's

4.2.2, 4.2.9, 4.3.4, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing

4.2.6, 12.2.1, 13.5
 Specifications, Definition of the
 1.1.6
 Specifications, The
 1.1.1, **1.1.6**, 1.1.7, 1.2.2, 1.6, 3.11, 3.12.10, 3.17
 Statute of Limitations
 4.6.3, 12.2.6, 13.7
 Stopping the Work
 2.3, 4.3.6, 9.7, 10.3, 14.1
 Stored Materials
 6.2.1, 9.3.2, 10.2.1.2, 10.2.4, 11.4.1.4
 Subcontractor, Definition of
 5.1.1
SUBCONTRACTORS
5
 Subcontractors, Work by
 1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7
 Subcontractual Relations
 5.3, 5.4, 9.3.1.2, 9.6, 9.10.10.2.1, 11.4.7, 11.4.8, 14.1,
 14.2.1, 14.3.2
 Submittals
 1.6, 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.6, 9.2, 9.3, 9.8,
 9.9.1, 9.10.2, 9.10.3, 11.1.3
 Subrogation, Waivers of
 6.1.1, 11.4.5, 11.4.7
 Substantial Completion
 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 9.10.4.2,
 12.2, 13.7
 Substantial Completion, Definition of
 9.8.1
 Substitution of Subcontractors
 5.2.3, 5.2.4
 Substitution of Architect
 4.1.3
 Substitutions of Materials
 3.4.2, 3.5.1, 7.3.7
 Sub-subcontractor, Definition of
 5.1.2
 Subsurface Conditions
 4.3.4
 Successors and Assigns
13.2
 Superintendent
3.9, 10.2.6
 Supervision and Construction Procedures
 1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 4.3.3, 6.1.3, 6.2.4,
 7.1.3, 7.3.6, 8.2, 8.3.1, 9.4.2, 10, 12, 14
 Surety
 4.4.7, 5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2
 Surety, Consent of
 9.10.2, 9.10.3
 Surveys
 2.2.3

Suspension by the Owner for Convenience

14.4

Suspension of the Work

5.4.2, 14.3

Suspension or Termination of the Contract

4.3.6, 5.4.1.1, 11.4.9, 14

Taxes

3.6, 3.8.2.1, 7.3.6.4

Termination by the Contractor

4.3.10, **14.1**

Termination by the Owner for Cause

4.3.10, 5.4.1.1, **14.2**

Termination of the Architect

4.1.3

Termination of the Contractor

14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1,
 10.3.2, 11.4.1.1, 12.2.1, **13.5**

TIME

8

Time, Delays and Extensions of

3.2.3, 4.3.1, 4.3.4, 4.3.7, 4.4.5, 5.2.3, 7.2.1, 7.3.1, 7.4.1,
 7.5.1, **8.3**, 9.5.1, 9.7.1, 10.3.2, 10.6.1, 14.3.2

Time Limits

2.1.2, 2.2, 2.4, 3.2.1, 3.7.3, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,
 4.3, 4.4, 4.5, 4.6, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2,
 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3,
 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14

Time Limits on Claims

4.3.2, 4.3.4, 4.3.8, 4.4, 4.5, 4.6

Title to Work

9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK

12

Uncovering of Work

12.1

Unforeseen Conditions

4.3.4, 8.3.1, 10.3

Unit Prices

4.3.9, 7.3.3.2

Use of Documents

1.1.1, 1.6, 2.2.5, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.4.2

Waiver of Claims by the Contractor

4.3.10, 9.10.5, 11.4.7, 13.4.2

Waiver of Claims by the Owner
4.3.10, 9.9.3, 9.10.3, 9.10.4, 11.4.3, 11.4.5, 11.4.7, 12.2.2.1,
13.4.2, 14.2.4
Waiver of Consequential Damages
4.3.10, 14.2.4
Waiver of Liens
9.10.2, 9.10.4
Waivers of Subrogation
6.1.1, 11.4.5, **11.4.7**
Warranty
3.5, 4.2.9, 4.3.5.3, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2,
13.7.1.3
Weather Delays
4.3.7.2
Work, Definition of
1.1.3

Written Consent
1.6, 3.4.2, 3.12.8, 3.14.2, 4.1.2, 4.3.4, 4.6.4, 9.3.2, 9.8.5,
9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2
Written Interpretations
4.2.11, 4.2.12, 4.3.6
Written Notice
2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 4.3, 4.4.8, 4.6.5, 5.2.1,
8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4,
13.3, 14
Written Orders
1.1.1, 2.3, 3.9, 4.3.6, 7, 8.2.2, 11.4.9, 12.1, 12.2, 13.5.2,
14.3.1

ARTICLE 1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), ~~the GMP Modification (if any), General~~ Conditions of the Contract (~~General, Supplementary and other Conditions~~), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, or (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the ~~Architect~~ Owner. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements). All Change Order, Application and Certificate of Payment, Certificate of Substantial Completion, and other forms used during construction shall be the current AIA form, or modifications thereto or other form approved by Owner. In the event of a conflict between the provisions of the Agreement and provisions of other Contract Documents the provisions of the Agreement shall prevail. The Owner/Civil Engineer shall not include revisions to these General Conditions in any other Contract Document. Any such revisions shall be attached hereto and shall be valid only if signed by Owner and Contractor.

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the ~~Architect~~ Civil Engineer and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor (except as set forth in Paragraphs 5.3 and 5.4), (3) between the Owner and ~~Architect~~ Civil Engineer or (4) between any persons or entities other than the Owner and Contractor. The ~~Architect~~ Civil Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the ~~Architect's~~ Civil Engineer's duties.

1.1.3 THE WORK

The term "Work" means all required site work, excavation, base building and interior construction required by and reasonably inferable from the Contract Documents to achieve a complete and functioning Project. The Work includes all labor, materials, equipment and services, including but not limited to delivery, storage, handling and installation of all materials and equipment, as well as related and incidental work, provided or to be provided by the Contractor to fulfill the Contractor's obligations, as set forth in the Contract Documents and as performed in accordance with the Contract Documents and applicable Legal Requirements (as defined in the Agreement at Paragraph 2.3). Contractor shall not be responsible for compliance of the design of the Project with applicable federal, state and local laws, codes, ordinances, regulations and orders ("the Design Legal Requirements"). the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.4 THE PROJECT

The Project is the total construction of all which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams. Locations and dimensions thereon are in some cases schematic and diagrammatic. Actual dimensions shall include those dimensions in accordance with revised and approved Shop Drawings and those dimensions based on field verification.

1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.1.8 KNOWLEDGE, RECOGNITION AND DISCOVERY

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows, recognizes, or discovers, or, in the exercise of reasonable care, skill and diligence, should have known, recognized or discovered. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean that which a contractor, performing the Work (including the Preconstruction Services) and familiar with the Project and projects of a similar scope, would reasonably understand through the exercise of reasonable care, skill, and diligence. As to the terms set forth in this paragraph, the standard of care, skill and diligence shall be that of an experienced construction contractor and not that of a design professional. Nothing herein shall be construed as an obligation on the part of the Contractor to assume any design obligations or liability for design errors and omissions.

1.1.9 GENERAL REQUIREMENTS

The General Requirements are a series of general, administrative and procedural requirements to prepare for, to construct, or to complete the Work. For this Project, the words "General Requirements" and "Division 1" are interchangeable and equal in meaning.

1.1.10 SAFETY

When the word "safety," or any derivative thereof, is used in the General Documents, it shall be construed to mean "safety and health."

1.1.11 CONTRACTOR'S SOLE COST OR EXPENSE

When the words "Contractor's sole cost," "Contractor's sole expense," or words of similar affect are used in the Contract Documents, it shall be construed to mean that the cost or expense is a non-reimbursable expense under the Agreement.

1.1.12 WORK PACKAGE

The term "Work Package" means Drawings and Specifications, along with the required studies, design reports and other explanatory attachments, for a coordinated portion of the Work. Work Packages shall be prepared by the Civil Engineer and other qualified professional consultants or specialists. A Work Package shall be designated as either "Design Development Submission", "Construction Document Submission" or "For Construction."

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results ~~and to the extent needed to produce a complete and functioning Project regardless of whether such item is specifically identified in the Contract Documents.~~ Full-size or large-scale details or drawings shall govern small-scale drawings that the former are intended to amplify. Dimensions shall be figured rather than determined by scale or rule. Where the Drawings and Specifications conflict with each other or with themselves, Drawings shall govern ~~the Civil Engineer will decide which conflicting requirement governs.~~

1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade, and Contractor shall be responsible for performing the Work, at no additional cost, regardless of the arrangement and organization of the Drawings and Specifications.

1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.4 If any item or material shown on the Drawings is omitted from the Specifications, or vice-versa (except when the Drawings and Specifications clearly exclude such omitted item), and when such item or material is clearly inferable from the Contract Documents as being required to complete the detail shown or specified, the Contractor shall furnish and install such item or material of the type and quality established by the balance of the detail shown and specified at no increase to the Guaranteed Maximum Price. Also, if there is any conflict as to the quality of material or the level of service, the Drawings shall govern. Contractor shall provide the greater quantity or better quality of materials and the highest level of service at no increase to the Guaranteed Maximum Price.

1.2.5 Where a typical or representative detail is shown on the Drawings, this detail shall constitute the standard for workmanship and materials throughout corresponding parts of the Work, as indicated on the Drawings.

1.2.6 Any Summary of Work as outlined in the Specifications shall not be deemed to limit the work required by the Contract Documents. The Contractor and each Subcontractor shall be responsible for thoroughly examining all Drawings, including all details, plans, elevations, sections, schedules and diagrams, as well as all measurements and dimensions, for each particular type of work, and for coordinating the Work described in the Drawings with the related Specifications. The Contractor shall also be responsible for determining the exact scope of work for each type of work and for checking cross-references of work excluded from any division. The Guaranteed Maximum Price is deemed to be based on a complete installation as reasonably inferable from the Contract Documents. When additional details or instructions are required to complete the work, the Contractor is deemed to have made an allowance in the Guaranteed Maximum Price for completion of such Work, consistent with the standard of care set forth in Paragraph [2.3] of the Agreement.

1.2.7 The Drawings are intended to show the arrangement, design and extent of the Work and are partly schematic in nature. They are not to be scaled for roughing-in measurements or used as shop drawings.

1.3 CAPITALIZATION

1.3.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

1.4 INTERPRETATION

1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.5 EXECUTION OF CONTRACT DOCUMENTS

1.5.1 ~~The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.~~

1.5.2 ~~By executing the Contract, the Contractor warrants that he has closely inspected the Project site as well as the conditions of adjacent properties and has recorded to his satisfaction the physical conditions of existing properties, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents. Claims for additions to the Contract Time or the Guaranteed Maximum Price because of the failure of the Contractor to familiarize itself with readily ascertainable conditions at the Project site will not be allowed. The Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the Project site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.~~

1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

1.6.1 The Drawings, Specifications and other documents, including those in electronic form, even if prepared by the Contractor or a Subcontractor, Architect and the Architect's consultants are property of the Owner. Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one (1) record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect Civil Engineer or the Architect's Civil Engineer's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of such Drawings, Specifications, or other documents, Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect Civil Engineer and/or Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect Civil Engineer and the Architect's Civil Engineer's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect Civil Engineer and the Architect's Civil Engineer's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect Civil Engineer and the Architect's Civil Engineer's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's, Architect's Civil Engineer or Architect's Civil Engineer's consultants' copyrights or other reserved rights.

1.7 CONFIDENTIALITY

1.7.1 The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any confidential information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law.

1.7.2 The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Paragraph 1.7.

1.7.3 The representations and warranties contained in this Paragraph 1.7 shall survive the complete performance of the Work or earlier termination of this Agreement.

1.7.4 Any and all inventions and discoveries, whether or not patentable, conceived or made by the Contractor as a result of the Contractor's discussions with the Owner or performance of the Work, which are based substantially on the Owner's proprietary information shall be the sole and exclusive property of the Owner. The Contractor agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Contractor agrees to assign, or cause to be assigned, such inventions and discoveries to the Owner. Further, the Contractor shall execute, or cause to be executed, all applications, assignments or other instruments which the Owner may deem reasonably necessary to enable the Owner, at Owner's expense, to apply for, prosecute and obtain patents in any country for said inventions and discoveries, or to assign and transfer to the Owner the entire right, title and interest thereto.

ARTICLE 2 OWNER

2.1 GENERAL

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Subparagraph 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized

representative.

2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. Owner represents that the City of Rockville has made an appropriation for the funding of the work under this Contract and that such funding is sufficient to fulfill Owner's obligations under this Contract, which is a condition precedent to commencement and continuation of the Work.

2.2.2 Except for permits and fees, including those required under Subparagraph 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. If the Contractor becomes aware of any such approvals or permits that are the Owner's responsibility, Contractor shall promptly notify the Owner that the Owner has failed to obtain such approvals or permits in writing.

2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner only upon written request of the Contractor with reasonable promptness and shall be complete and accurate to the best of Owner's knowledge, information and belief. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services. Contractor shall review all documents and information received from the Owner and, if Contractor discovers that the documents or information are inadequate or if Contractor needs additional information, Contractor shall notify Owner immediately in writing.

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, five (5) such copies of Drawings and Project Manuals, as are reasonably necessary for execution of the Work.

2.2.6 Except for directives from Owner to Contractor, or in the event of Owner's fault or negligence, the Owner's participation in the Project shall in no way relieve the Contractor of its duties and responsibilities under applicable law or the Contract Documents.

2.2.7 The Owner shall not be responsible for the resolution of differences or disputes between or among the Contractor, Subcontractors or Sub-subcontractors.

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails, after notice, to commence and continue correction of Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents within a seven (7) day period after written notice by Owner of such persistent failure if the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials or equipment so as to be able to complete the Work within the Contract Time, or fails to remove and discharge (within ten (10) days) any lien improperly filed upon Owner's property by anyone claiming by, through or under Contractor, or disregards the instructions of the Civil Engineer or Owner

~~when based on the requirements of the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.~~

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness ~~or fails within such seven (7) day period to eliminate the cause of any stop work order issued under Subparagraph 2.3.1, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies,~~ the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the ~~Architect's Civil Engineer's and Owner's Representatives' additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect.~~ If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

3.1 GENERAL

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the ~~Owner or of the Architect Civil Engineer~~ in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. Contractor also shall verify field conditions and shall carefully compare the Contract Documents with the field measurements, dimensions, elevations, conditions, and other information known to the Contractor. The Contractor shall employ a licensed surveyor to locate and stake out the Work and establish necessary reference and bench marks. The Contractor shall work from established bench marks and reference points, lay out and correctly establish all lines, levels, grades and locations of all parts of the Work and be responsible for their accuracy and proper correlation with Work and established data. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor, including any requirements that may be contrary to any Legal Requirement or Design Legal Requirement, shall be reported promptly to the Owner in writing and to the Architect Civil Engineer as a properly prepared, timely RFI request for information in such form as the ~~Architect Civil Engineer or Owner~~ may require.

3.2.1.1 Contractor's request for information, interpretation, or clarification ("RFI") shall be made to the Civil Engineer in writing with a copy to the Owner on an RFI form furnished by Civil Engineer. Contractor is to submit a copy of the form completely filled out with the request clearly stated and with reference to all applicable Drawings by detail and Specifications made by section and paragraph. RFIs are to be numbered sequentially (1, 2, 3, 4, etc.) and shall indicate the subject and description of the RFI, submission date, to whom submitted, and required response date. The Owner or Civil Engineer will respond in sufficient time to support the progress of the Work and return a single copy to Contractor. Contractor will copy and

distribute to all parties affected by response.

3.2.1.2 If information requested in an RFI is clearly contained in the Contract Documents, or should have been known by the Contractor exercising reasonable care, skill and diligence, and the Owner incurs additional costs to the Civil Engineer or Owner's Representatives or others for the Civil Engineer's review, analysis, response or processing of the RFI, the Contractor shall reimburse the Owner for such costs.

3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect Civil Engineer, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. Except as otherwise required by the Contract Documents, the Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Owner and the Architect Civil Engineer.

3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect Civil Engineer in response to the Contractor's notices or requests for information pursuant to Subparagraphs 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Paragraph 4.3. Subparagraphs 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect Civil Engineer for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized or in the exercise of the applicable standard of care should have recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect Owner and Civil Engineer.

3.2.5 The Contractor hereby specifically acknowledges and declares that upon agreement as to the Guaranteed Maximum Price for the Work, such agreement constitutes a representation by him that the Contract Documents are sufficient to enable the Contractor to determine the cost of such work as shown in the Contract Documents, and to the best of his knowledge the Drawings, Specifications and addenda do not vary with applicable laws, statutes, building codes and regulations. The Contractor further acknowledges that, having carefully examined all Drawings, Specifications and other documents, to the best of his knowledge there are no material discrepancies among the Contract Documents.

3.2.6 The Contractor shall prepare Coordination Drawings that depict composite shop drawings and installation layouts to depict proposed solutions for all tight field conditions including, but not limited to, mechanical rooms, restrooms and ceiling space. These Coordination Drawings and field installation layouts shall be coordinated by Contractor and its Subcontractors for proper relationship to the Work of other trades, based on field conditions. Before materials are fabricated or work begun, Contractor shall submit to the Civil Engineer complete Coordination Drawings in the form of reproducible (mylar) transparencies at not less than scale of the Civil Engineer's Drawings. Congested areas and sections through shafts shall be at not less than scale of the Civil Engineer's Drawings.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention in accordance with the Contract Documents, all Legal Requirements, and the highest construction standards and practices for a complete and functioning Project and related improvements. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect Civil Engineer and shall not proceed with that portion of the Work without further written instructions from the Architect Civil Engineer. The Contractor shall further be responsible for all loss or damage resulting from the failure of the Contractor or a Subcontractor to adhere to any method or operating procedure or sequence or technique specified in the Contract Documents, unless the Contractor has given timely written notice to the Owner and the Civil Engineer that such method, procedure,

~~sequence or technique is not suitable for its intended purpose.~~ If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

3.3.2 The Contractor shall be responsible to the Owner for the performance of the Work in accordance with the Contract Documents by Contractor's employees, Subcontractors, and by other persons performing portions of the Work under contract with Contractor acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work or supplying materials for or on behalf of the Contractor or any of its Subcontractors.

3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

3.3.4 The Contractor shall coordinate all field work and shop drawings of the various trades prior to installation of the Work. In spaces where various installations cannot be accommodated, the Contractor shall, prior to fabrication or installation of the Work, notify the Owner and shall cooperate with the Owner in developing a solution to the problem at no increase to the GMP at no additional cost to the Owner. The Contractor shall be solely responsible for coordinating the various trades involving the location and size of all sleeves, electrical outlets, inserts, piping, conduits, hangers, ducts and similar installations. The Contractor agrees that all such installations shall be clear of obstructions and shall be constructed in a manner presenting an orderly appearance at no increase to the GMP at no additional cost to the Owner.

3.3.5 The Contractor shall provide quality control services throughout the Project.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 The Contractor may make substitutions only in accordance with the Contract Documents and with the consent of the Owner, after evaluation by the Architect Owner and in accordance with a Change Order.

3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of continue to employ unfit persons or persons not skilled in tasks assigned to them. The Contractor shall use its best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance and shall only use labor capable of working harmoniously with all trades and crafts.

3.4.4 The Contractor shall maintain an adequate labor force at all times for the expeditious and proper completion of the Work. All workmen and Subcontractors shall be skilled in their respective trades.

3.4.5 Any employee of the Contractor or any employee of a Subcontractor whose work is unsatisfactory to the Owner or who is considered in the reasonable judgment of the Owner to be unskilled or who is otherwise objectionable to the Owner fails to comply with the requirements of the Agreement shall be dismissed from the Work by the Contractor upon written notice from the Owner.

3.4.6 The Contractor shall provide and maintain all temporary storage on the Project site as required for his use. The Owner shall approve the locations of storage, and these locations shall be subject to relocation upon the Owner's request at no increase to the GMP at no additional charge or cost.

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner ~~and Architect~~ that materials and equipment furnished under the Contract will be of good quality, of recent manufacture, and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, that the Work will be performed in a good and

workmanlike manner, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. Modifications, extensions, attachments to, completion of, or repair to systems in the Work by others (including the Owner or tenants performing tenant improvement work), including without limiting the generality of the foregoing the electrical, HVAC, plumbing, security and sprinkler systems, shall not void the Contractor's warranty for the Contractor's work so long as the same are done in accordance with the original design and installation standards by Subcontractors and suppliers certified to perform such work by the original manufacturer. If required by the Architect Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.2 Contractor shall issue in writing to the Owner as a condition precedent to the Final Payment, a General Warranty reflecting the conditions of Subparagraph 3.5.1 for all Work under the Contract.

3.6 TAXES

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure, and pay for, and as soon as practicable furnish the Owner with copies or certificates of the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded. All The following connection charges, assessments, or inspection fees as may be imposed by any municipal agency or utility company are included in the Guaranteed Maximum Price and shall be the Contractor's responsibility. Such permits and governmental fees, licenses and inspections include, but are not limited to:

- (1) General building permits;
- (2) Street access permits and all other permits, licenses, inspections, fees and the like required to complete the Project, unless specifically stated otherwise in the Contract Documents;
- (3) Sanitary tap fees, utility meter installation and hook-up charges, and other charges assessed by the City, County, or other sanitary commission;
- (4) Permits for elevator, mechanical, plumbing and electrical work necessary for work performed by Subcontractors;
- (5) All partial and final Certificates of Approval; and
- (6) Sewer, water and gas tap fees regarding utility connections and extensions.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders and other requirements of public and private authorities applicable to performance of the Work. Contractor shall coordinate its Work with public or private authorities, such as utility companies, as required or advisable for performance of the Work. The Contractor shall procure and obtain performance and payment bonds required of the Owner or the Contractor by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary backup material, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate from time-to-time for the performance of the Work, but only to the extent that such matters are within the scope of Contractor's responsibilities under the Contract Documents.

3.7.2.1 If any of the Work is required to be inspected or approved by any public or private authority, the Contractor shall cause such

inspection and approval to be performed. No inspection performed or failed to be performed by the Owner, any public or private authority shall constitute a waiver of any of the Contractor's obligations or be construed as an approval or acceptance of any latently defective or deficient Work or any part thereof.

3.7.3 ~~Except as otherwise set forth in the Contract Documents, it~~ It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if ~~if~~ the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the ~~Architect Civil Engineer~~ and Owner in writing, and necessary changes shall be accomplished by appropriate Modification. In addition to the foregoing, the Contractor shall inform itself fully of all Legal Requirements relating to the performance of the Work, shall comply with all Legal Requirements and shall cause all of its Subcontractors to similarly comply with all Legal Requirements.

3.7.4 If the Contractor performs Work ~~knowing it that it knows or in the exercise of the applicable standard of care should know to be contrary to the Legal Requirements, laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner,~~ the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

3.8 ALLOWANCES

3.8.1 The Contractor shall include in the ~~Guaranteed Maximum Price Contract Sum~~ all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the allowance amount except for Contractor's Fee, General Conditions, insurance/bond costs which shall be in the Guaranteed Maximum Price Contract Sum but not in the allowances;
- .3 whenever costs are more than or less than allowances, the Guaranteed Maximum Price Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.1 and (2) changes in Contractor's costs under Clause 3.8.2.2.

3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

3.9 SUPERINTENDENT

3.9.1 The Contractor shall employ a competent superintendent, a project manager, and necessary assistants who shall be in attendance at the Project site during performance of the Work. The project manager and superintendent shall represent the Contractor, and communications given to the project manager and superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Owner reserves the right to review and approve or disapprove the project manager and superintendent, and any replacement for such positions, in Owner's sole and absolute reasonable discretion until completion of all Work.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 The Contractor shall, as set forth in the Agreement and as part of its Guaranteed Maximum Price Proposal, submit a detailed progress schedule for the entire Project ("Construction Schedule") which (i) provides a graphic representation of all activities and events that will occur during performance of the Work; (ii) identifies each phase of construction and occupancy; and (iii) sets forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements

of the Contract Documents ("Milestone Dates"). The Contractor shall be required to meet the Milestone Dates set forth in the Construction Schedule. The Construction Schedule will be attached as Exhibit [] to the Agreement and incorporated herein by this reference. The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Contractor shall be entitled to certain incentive bonuses for meeting certain Milestone Dates set forth in the Construction Schedule. Such bonuses are set forth in Exhibit []

3.10.2 The Contractor shall prepare and keep current, for the Architect's Owner's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect Owner and Civil Engineer reasonable time to review submittals.

3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner and Architect. (Contractor shall not be required to adhere to a schedule different than the schedule upon which the Contractor based the Contract Amount or to a schedule previously agreed upon in the event that significant changes in the Contract Documents subsequent to the delivery of the previous schedule cause such schedule to be unreasonable or impractical)

3.10.4 The Construction Schedule shall provide for the most reasonably expeditious and practicable execution of the Work. The Contractor shall also work closely with the Owner to confirm that the Construction Schedule accurately reflects the status of the Project. The Contractor's Construction Schedule shall be updated every month by the Contractor and submitted to the Owner. Contractor is responsible for expediting the Work, identifying potential conflicts and coordination problems that could affect the Contract Time and proposing measures to avoid such problems.

3.10.4.1 Whenever it becomes apparent from the updated Construction Schedule or Progress Report that the completion date or Milestone Dates previously established by the Construction Schedule may not be met and that such delay is due to any act, event or matter for which the Contractor is responsible, the Contractor shall, at the Owner's request, take any or all of the following actions with no increase to the Guaranteed Maximum Price or Contract Time (unless the delay is caused by an event set forth in Subparagraph 4.3.7.1 of these General Conditions thereby permitting adjustment of the Guaranteed Maximum Price and/or Contract Time under Subparagraph 4.3.7.2 and Subparagraph 4.3.5.1 of these General Conditions):

- (a) Increase construction manpower to substantially eliminate the back-log of work and return the Project to schedule;
- (b) Increase the number of working hours per shift, shifts per day or the amount of construction equipment or any combination of the foregoing which will substantially eliminate the back-log of work and return the Project to schedule;
- (c) Reschedule activities to concurrently accomplish activities, to the maximum degree practicable, in the time required by the Contract Documents.

If the Contractor fails to take any of these actions within seventy-two (72) hours after receiving notice from the Owner, the Owner may (i) take action to attempt to return the Project to schedule and (ii) deduct the cost of such actions from the monies due or to become due to the Contractor, unless the delay is due to a reason articulated in Subparagraph 4.3.7.1. If the delay is due to a reason articulated in Subparagraph 4.3.7.1, the Contractor shall submit to the Owner a recovery plan upon the Owner's request. The Owner may exercise the rights furnished pursuant to this Subparagraph 3.10.4 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Dates and Substantial Completion Date set forth in the Contract Documents.

3.10.5 Each month the Contractor shall submit to Owner a monthly status report ("Monthly Status Report"). The Monthly Status Report shall summarize the work performed during the preceding month and shall set forth the milestones achieved.

3.10.6 If the Contractor fails to submit updated schedules or the Monthly Status Reports as required, then Owner may, at any time, withhold the payment of one-half of the current payment due for the Contractor's General Conditions Costs and Fee. Upon submission of the outstanding updated schedule(s) or report(s), any amount(s) so withheld shall be released and paid to the Contractor.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner one (1) record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one (1) record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner and the Architect/Civil Engineer and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

3.11.2 The Contractor shall permit the Owner and anyone designated by Owner to enter upon the Project site, inspect the Work and all materials to be used in the construction thereof, and examine all Drawings and Specifications, shop drawings and other Contract Documents which are or may be kept by the Contractor or its Subcontractors at the Project site. The Contractor shall cooperate and shall cause all of its Subcontractors to cooperate with the Owner. For each inspection by Owner, the Contractor shall make available, on demand, daily log sheets covering the period from the date of the immediately preceding inspection and showing the date, weather, Subcontractors on the job, number of workers and status of the Work. Although the Owner shall have no obligation to do so, it shall have the right to inspect any material or equipment at any stage of development or fabrication, whether specified or noted, including, but not limited to the manufacturer's plant or mill. Such inspection shall not release the Contractor from any responsibility or liability with respect to such material or equipment. No inspection, test or payment shall be construed as constituting or implying acceptance of the Work or affect the continuing rights of Owner hereunder after acceptance of the completed Work.

3.11.3 For the duration of the Project, the Contractor shall maintain and update monthly, with completed-to-date "As-Built" notations, a designated set of Drawings which shall be available at the Project site for the Owner's and the Civil Engineer's inspection at any time. These documents shall be known as the "As-Built Drawings" and shall contain the documents listed hereunder. The information given therein shall include, but not be limited to: (i) the actual location of the underground utilities and appurtenances as referenced to permanent surface improvements; (ii) the location of internal utilities and appurtenances concealed in building structures; and (iii) significant changes during the construction process and significant detail not shown in the original Contract Documents. The As-Built Drawings are to be kept accurately. No work shall be permanently concealed until the required information has been recorded. Contractor shall be provided current construction drawings incorporating significant design changes for the purpose of recording as-built information.

3.11.4 Each of the As-Built Drawings shall be clearly marked "Project Record Copy," maintained in good condition, available at all times for inspection by the Owner or the Civil Engineer and not used for construction purposes.

3.11.5 The Contractor shall submit weekly to the Owner copies of its Daily Reports (typed or legibly written), to be received by the Owner the second- fifth business day after the week of the report activity. The contents and format of the Daily Reports shall be Contractor's standard format as approved by the Owner and shall include, but not be limited to, manpower and equipment counts, weather report, description of Work in progress identified by area, and, to the extent recognized by Contractor, the failure of a Subcontractor to perform its Work and any other delays. The manpower count should be a list of foreman, journeymen, apprentices and laborers itemized by trade. The Subcontractor shall be required to prepare similar reports which will be available to the Owner upon request.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which

the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect Civil Engineer is subject to the limitations of Subparagraph 4.2.7. Informational submittals upon which the Architect Civil Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect Civil Engineer without action.

3.12.5 Working with the Owner, within sixty (60) days after the date of commencement of the Work, the Contractor shall agree upon submit a Submittal Review Schedule setting forth reasonable and adequate dates for the submission and review of all submittals. The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Civil Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness in accordance with the approved Submittal Schedule and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. The Contractor shall sign each submittal and stamp it with "REVIEWED FOR COMPLIANCE WITH THE CONTRACT DOCUMENTS AND APPROVED." Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect Civil Engineer without action. The Civil Engineer shall likewise be obligated to review and approve or return for correction, all submittals with reasonable promptness in accordance with the approved submittal schedule and in such sequence as to cause no delay to the Work. The Approved Submittal Schedule may be modified to accommodate any re-sequencing or other changes in the Project schedule subject to the mutual consent of the Owner and Contractor.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents, and the Owner and Civil Engineer may rely on such information.

3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved or "approved as noted" by the Architect Civil Engineer.

3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's Civil Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect Civil Engineer in writing of such deviation at the time of submittal and (1) the Architect Civil Engineer has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's Owner or Civil Engineer's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect Civil Engineer on previous submittals. In the absence of such written notice the Architect's Civil Engineer's approval of a resubmission shall not apply to such revisions.

3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect Civil Engineer will specify appropriate all performance and design criteria that such services must satisfy. If such design professional needs further information from the Civil Engineer, it shall properly so inform the Civil Engineer. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all

drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional and who shall comply with the reasonable requirements of Owner regarding qualifications and insurance. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect Civil Engineer. The Owner and the Architect Civil Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Subparagraph 3.12.10, the Architect Civil Engineer will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

3.12.11 The Contractor shall not be entitled to a time extension for any delay to the date of Substantial Completion if the Contractor failed to submit shop drawings, samples or submittals in accordance with the approved submittal review schedule (or, failing such schedule or an item on it, in sufficient time to allow for adequate review and approval), unless such failure was due to reasons beyond the Contractor's control. The Contractor shall submit all shop drawings and submittals at least fourteen (14) days before those shop drawings and submittals need to be released to the appropriate Subcontractor or supplier in order to meet the Construction Schedule. Unless otherwise agreed by the Owner and Contractor, the Owner shall respond or shall cause the Civil Engineer to respond to such shop drawings and submittals within fourteen (14) days after their submission by the Contractor. Notwithstanding the foregoing, the Approved Submittal schedule may be modified to suit the needs of the Project subject to the mutual consent of the Owner and Contractor. If the Owner and the Contractor agree to a different submittal schedule, the Owner and Contractor shall comply with the date set forth on such schedule.

3.12.12 The Contractor shall assemble, for the Owner's approval, two (2) complete copies, in loose-leaf binders, of all operating and maintenance data from all manufacturers whose equipment is installed in the Project. The Contractor shall also prepare, for the Owner's approval, a checklist or schedule showing the type of lubricant to be used at each point of application and the intervals between lubrication for items of equipment.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall prepare and use a plan for efficient and effective use of the Project site and for secure storage of materials and equipment by the Contractor and all Subcontractors.

3.13.2 The Contractor shall not interrupt utility service to the site or to adjacent buildings. If the Contractor is required to interrupt utility services to desire to perform its Work, Contractor shall coordinate such interruption with the Owner and any affected tenants so as to minimize any impact avoid any damage to the Owner or the tenants. Notwithstanding anything to the contrary contained in the Contract Documents, Contractor shall not interrupt utility service during business hours without prior approval of the Owner for any reason and Contractor shall pay any related outage fee and/or premium or overtime charges.

3.13.3 Without limitation of any other provision of the Contract Documents, the Contractor shall not unreasonably interfere with the occupancy or beneficial use of any areas and buildings in or adjacent to the Project site.

3.13.4 The Contractor shall assure reasonably free, convenient, unencumbered and direct access to properties neighboring the Project site within the alley, street and sidewalk for the owners of such properties and their respective tenants, agents, invitees and guests to the extent reasonably possible. Contractor will closely coordinate any planned disruptions of the alley area with affected adjacent property owners or property managers.

3.13.5 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

3.13.6 Except as may be stipulated by the Contract Documents, the Contractor shall not encroach upon adjacent property for storage of materials or any other reason, nor shall any of the Contractor's employees be permitted on said properties without

written permission of the adjacent property owners and a copy of such permission provided to the Owner. The Contractor shall repair, at no increase to the GMP, and any and all damage or injury to adjacent property caused by performance of the Work and leave the property in as good condition as before work was started. Contractor shall, at no increase to the GMP ~~its sole cost~~, indemnify, defend and hold harmless the Owner from any liability or responsibility for any claims due to such damage or injury. Notwithstanding anything to the contrary in the Contract Documents, Contractor shall not be responsible for the cost related to property damage or injury unless the property damage or injury is caused by the negligence of the Contractor. Subcontractor or other person for whom the Contractor is responsible and only to the extent that such costs are not covered by insurance to be provided in accordance with the Contract Documents. ~~Costs not borne by the Contractor shall not increase the GMP.~~

3.13.7 Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Work, as such rules and regulations may be amended from time-to-time. The Contractor shall immediately notify the Owner in writing if, during the performance of the Work, the Contractor finds compliance with any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements. In the event that Contractor's Work or schedule is unreasonably impacted by such requirements, Contractor shall be entitled to an equitable adjustment for such impact.

3.13.8 The Contractor shall also comply with all insurance requirements and collective bargaining agreements applicable to the use and occupancy of the Project site and the Work.

3.13.9 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is ~~solely~~ the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the Project site and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Project site shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

3.13.10 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

3.13.11 The Contractor shall notify Owner of any crane swing, underpinning, or similar agreement with adjacent property owners that would facilitate the construction of the Project, but Owner is under no obligation to obtain such agreements. Contractor shall comply with the requirements of all such agreements. In the event that Contractor's Work or schedule is impacted by the Owner's failure to obtain such agreements, Contractor shall be entitled to an equitable adjustment for any such impact.

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. In the event of cutting by the Contractor, the Contractor shall patch as reasonably required by the Owner or the Civil Engineer. Any such requests for consent by Owner, Contractor or others shall be acted upon promptly so as to not delay the progress of the Work.

3.15 CLEANING UP

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. The Contractor shall maintain streets, alleys, and sidewalks around the Project site in a clean condition. The Contractor shall remove all spillage and tracking arising from the performance of the Work from such areas, and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas. The Contractor is to provide sufficient means for the prompt disposal of all food trash on a daily basis. The Contractor is fully responsible for all rodent control until two (2) months after substantial completion. Any rodent problems affecting the Owner or its tenants will be remediated by the Contractor at its cost. If the Contractor's waste materials interfere with the progress of the Work or the Owner's or any tenant's operations, the Contractor shall remove such waste materials and rubbish daily. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor. The Contractor's final cleaning of the Project site at the completion of the Work shall also include, without limitation, leaving all floors mopped, buffed and broom-cleaned; vacuuming all carpets and soft areas; cleaning exterior and interior exposed-to-view surfaces (including all glass, windows and light fixtures); removing spots, plaster, soil and paint from ceramic tile, marble and other finished materials; removing all temporary protections, barriers, tags, labels and markings; cleaning all finishes and architectural needs (where applicable, in accordance with manufacturer's recommendations), leaving all surfaces free of dust, stains, films or other foreign substances; and removing all debris from any portion of the Project site, whether or not exposed (including, by way of example, in ductwork and on roofs). Contractor's final cleaning shall be completed upon substantial completion of each Designated Portion of the Project after which the Owner shall assume responsibility for cleaning and maintenance, except as otherwise specified or agreed.

3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner and Architect Civil Engineer access to the Work in preparation and progress wherever located.

3.17 ROYALTIES, PATENTS AND COPYRIGHTS

3.17.1 Unless otherwise required by the Contract Documents, (The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, the Owner's Representatives, and Architect Civil Engineer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect Civil Engineer. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright, or a patent, trademark, trade name, or similar property right or interest the Contractor shall promptly notify the Owner be responsible for such loss unless such information is promptly furnished to the Architect Civil Engineer.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Paragraph 11.3, the Contractor shall indemnify, defend, and hold harmless the Owner, Owner's Representative, Architect Civil Engineer, Architect's Owner's consultants, and agents and employees of any of them ("Indemnified Parties") from and against claims, damages, losses and expenses, including but not limited to attorneys' fees and expert witness fees (together, "Claims"), arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the breach of Contract or negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Nothing herein shall be construed to require Contractor to indemnify an Indemnified Party for Claims caused by or resulting solely from that Indemnified Party's own negligence or for claims covered by insurance the Owner is obligated to provide in accordance with the Contract Documents. It is agreed that with respect to any legal limitations now or hereafter in effect and affecting the validity and enforceability of the indemnification obligation under this Paragraph 3.18, such legal limitations are made a part of the indemnification obligation to the minimum extent necessary to bring Paragraph 3.18 into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect. Such obligation shall not be

construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18. Owner shall promptly advise Contractor in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Contractor, at Contractor's expense at no increase to the GMP shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to the Owner or other Indemnified Party, provided that (i) the Owner or other Indemnified Party shall have the right to be represented therein by advisory counsel of its own selection and at its own expense, and (ii) if the defendants in any such action include Contractor and the Owner or other Indemnified Party, and the Owner or other Indemnified Party shall have reasonably concluded that there may be legal defenses available to any of them which are different from or additional to, or inconsistent with, those available to Contractor, or if Owner or other Indemnified Party concludes Contractor has a conflict of interest and cannot adequately represent Owner or such Indemnified Party, then Owner or such Indemnified Party shall have the right to select separate counsel to participate in the defense of such action on their own behalf for which fifty percent (50%) of the cost shall be at Contractor's expense. In the event of failure by Contractor to fully perform in accordance with this indemnification paragraph, the Owner or other Indemnified Party, at the option of any of them, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses, including but not limited to attorneys' fees and expert fees, so incurred by Owner or such Indemnified Party in that event shall be reimbursed by Contractor to Owner or such Indemnified Party, together with interest on the same from the date that any such expense was paid by Owner or such Indemnified Party until reimbursed by Contractor, at the rate of interest provided in Paragraph 14.2 of the Agreement. The obligations of Contractor under this Subparagraph shall survive the expiration or termination of the Contract.

3.18.2 In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. Notwithstanding the foregoing, in the event that the law governing this Agreement bars recovery to a person who is contributorily negligent, Contractor shall have no liability under Paragraph 3.18.1 to an indemnified person who is contributorily negligent. In the event that the governing law provides for apportionment of liability on the basis of comparative negligence, Contractor's obligation under Paragraph 3.18.1 shall be limited to Contractor's Proportionate share of liability.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Paragraph 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if

the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 3.3.1.

4.2.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

4.2.6 The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

4.2.7 The Architect Civil Engineer will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect Civil Engineer's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect Civil Engineer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect Civil Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect Civil Engineer, of any construction means, methods, techniques, sequences or procedures. The Architect Civil Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

4.2.9 The Architect Civil Engineer will conduct inspections and advise the Owner so that the Owner can determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will recommend that Owner issue a final Certificate for Payment upon compliance based upon the Civil Engineer's final inspection indicating that the Work complies with the requirements of the Contract Documents.

4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

4.2.11 The ~~Architect~~ Civil Engineer will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The ~~Architect~~ Civil Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the ~~Architect~~ Civil Engineer shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on-account of failure by the ~~Architect~~ Civil Engineer to furnish such interpretations until 15 days after written request is made for them.

4.2.12 Interpretations and decisions of the ~~Architect~~ Civil Engineer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the ~~Architect~~ Civil Engineer will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

4.2.13 ~~The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.~~

4.2.14 ~~The Civil Engineer's response to an RFI, or issuance of a clarification or interpretation, shall be considered an interpretation, clarification, supplemental information or an order for a minor change in the Work not involving an adjustment in the Guaranteed Maximum Price or extension of Contract Time and shall be binding, unless indicated otherwise in response to the RFI.~~

4.3 CLAIMS AND DISPUTES

4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be ~~made~~ initiated by written notice ~~and as set forth in the Contract Documents.~~ The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 Time Limits on Claims. ~~Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.~~

4.3.3 Continuing Contract Performance. Pending final resolution (including litigation) of a Claim, except as otherwise agreed in writing or as provided in Subparagraph 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of undisputed amounts in accordance with the Contract Documents. ~~Contractor shall not be obligated to continue performance if the Owner unreasonably disputes or withholds amounts legitimately owed for bonafide changes.~~

4.3.4 Claims for Concealed or Unknown Conditions. If while performing the Work, the Contractor encounters subsurface or concealed physical conditions at the site that adversely impact the Work and (1) differ materially from those indicated in the Contract Documents (including but not limited to the Environmental/Geotechnical Reports) and other documentation regarding existing conditions issued to the Contractor and listed as a Contract Document on Exhibit given to the Contractor or of which the Contractor is aware (collectively, the "Condition Reports"), and (2) are of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents or are specifically excluded from Contractor's GMP, then Contractor shall give the Owner notice promptly before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. Owner shall have its appropriate technical consultant promptly investigate such conditions and advise Owner and Contractor whether, in the technical consultant's opinion, the conditions at the site are materially different from those indicated in the Contract Documents or Condition Reports and are of an unusual nature. If Owner and Contractor agree on whether the conditions result in an increase to the Cost of the Work, then Contractor shall be allowed to use the Contingency Fund for such Cost of the Work in accordance with the Contract; if the Contingency Fund is not sufficient to cover the cost of the subject Work, then an appropriate Change Order shall be issued increasing the Guaranteed Maximum Price. If Owner and Contractor agree on whether the conditions result in a change to the date for achieving Substantial Completion, then the parties will execute an appropriate Change Order. If the parties are unable to agree on the impact, if any, to the Cost of the Work or date for

achieving Substantial Completion, then Contractor shall make a claim therefor in accordance with Subparagraph 4.35 of the General Conditions. Notwithstanding the foregoing, no adjustment in the date for achieving Substantial Completion or the Cost of the Work shall be allowed to the extent that (a) the Contractor knew of those conditions prior to the date of this Agreement, (b) information was provided to the Contractor (including but not limited to the Condition Reports) was given to the Contractor from which those conditions should reasonably could have been discovered prior to the date of this Agreement, and (c) Contractor, in developing the Guaranteed Maximum Price, considered and made allowance for uncertainty as to the condition in question, or (d) an experienced contractor who has constructed many similar projects could should reasonably have discovered those conditions by performing a reasonable investigation or as part of the preconstruction services rendered on the Project. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so make within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

4.3.5 CLAIMS FOR ADDITIONAL COST OR ADDITIONAL TIME

4.3.5.1 If the Contractor wishes to make a claim for an extension of time for achieving Substantial Completion, or an increase in the Guaranteed Maximum Price, Contractor shall give Owner written notice within fifteen (15) days after the occurrence of the event giving rise to such claim and before Contractor proceeds to perform any additional Work. Within thirty (30) days after providing such written notice, unless such time is extended in writing, the Contractor shall submit a written statement to the Owner setting forth in detail (1) the nature and cause of the claim, and (2) an itemized and substantiated statement of the time extension or claim amount requested, or if sufficient information to do so is unavailable, then a reasonable estimate of the time extension or claim amount supported by such documentation as the Owner may request. If the Contractor has submitted a reasonable estimate, then within thirty (30) days after submitting such reasonable estimate, Contractor shall submit the detailed written statement required by the previous sentence. If requested by the Owner, the Contractor shall also submit a plan for recovery from the effect of the delay so as to achieve Substantial Completion on or before by the date established by the Contract Documents. Any claim not made in strict compliance with the provisions of this Paragraph 4.3 is waived. The Contractor acknowledges and agrees that the Owner can waive the requirements of this Paragraph only in writing and that Contractor cannot rely on any oral statement of the Owner to the contrary.

4.3.5.2 The requirements set forth in this Subparagraph 4.3.5 are of the essence. The Contractor shall have the burden to prove entitlement to any change in the Guaranteed Maximum Price or change in the Contract Time. Any change in the Guaranteed Maximum Price or Contract Time may only be effected by an authorized written Change Order signed by the Owner. No change in the Work requested by the Owner, whether an alteration or an addition to the Work, shall form the basis of a change to the Guaranteed Maximum Price or to any amounts due under the Contract Documents or to a change in the Contract Time unless and until such alteration or addition has been authorized by a written Change Order executed and issued in strict compliance with the requirements of this Subparagraph 4.3.5 and Article 7 or by written authorization to proceed with such Owner-recognized change in the Work signed by the Owner.

4.3.5.3 No course of conduct or dealing between the parties, nor express or implied acceptance of alterations or additions to the Work and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not any such unjust enrichment to the Work or to the Owner in fact exists, shall form the basis of any claim for an increase in any amount due under the Contract Documents or a change in the Contract.

4.3.5.4 All claims made by the Contractor, or by any subcontractor of any tier through the Contractor, shall be accompanied by a

certification by an officer of the Contractor having overall responsibility for the Contractor's affairs stating (1) the claim is made in good faith, (2) the supporting data are accurate and complete to the best of Contractor's knowledge and belief, and (3) the amount requested accurately reflects the contract adjustment for which the Contractor believes the Owner is liable. For subcontractor claims the Contractor may not rely on subcontractor certifications but must conduct an independent evaluation sufficient to certify the claim as stated above. False or inaccurate certification of a claim will entitle the Owner to recover its costs of defending such claim including but not limited to attorney, accountant and expert fees. Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.6.

4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect Civil Engineer, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect Civil Engineer, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Paragraph 4.3.

4.3.7 Claims for Additional Time

4.3.7.1 If the date of Substantial Completion is delayed at any time during the progress of the Work by (i) any change in the Work requested by the Owner in writing, or (ii) act of war, extraordinary unusually severe weather delay, labor dispute, fire, unavoidable casualties, civil commotion or national emergency, unusual delay in deliveries or (iii) by the negligence of the Owner or Civil Engineer, or an employee of either, or of a separate contractor employed by the Owner or (iv) circumstances beyond Contractor's reasonable control as reasonably determined by Owner, provided that (a) Contractor took reasonable steps to mitigate once the circumstances were known, and (b) the circumstances did not arise from a failure of the Contractor, Subcontractor or supplier to perform their contractual obligations, then the Contract Time shall be extended by Change order for such reasonable time as the Owner may determine, provided that the Contractor strictly complies with the provisions of Subparagraph 4.3.5 of the General Conditions. If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

4.3.7.2 Notwithstanding any other provision contained in this Contract, in the event of a delay to the date of Substantial Completion for which the Contractor is entitled to a time extension under Subparagraph 4.3.7.1(ii), (iii) or (iv) above (or for any other reason except as set forth in (i)), the Contractor shall be entitled to receive no costs or damages, but only to receive a time extension; however, in the event of delay to the date of Substantial Completion for which the Contractor is entitled to a time extension under Subparagraph 4.3.7.1(i), the Contractor's damages for delay shall be strictly limited include its General Conditions Costs (as defined in the Agreement) incurred, costs incurred by Subcontractors and suppliers directly attributable to the delay and the Contractor's shall not collect any Fee thereon. In no event shall Contractor be entitled to receive damages for additional home office overhead or lost profits regardless of the length or cause of any delay to the Project. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

4.3.7.2.1 The Contractor represents, acknowledges and agrees that the scheduled Substantial Completion Date set forth in Paragraph 4.3 of the Agreement, is the date by which Contractor expects to achieve Substantial Completion of the Work. Contractor waives the right to assert a claim against the Owner in the event that Contractor is unable to achieve Substantial Completion before the scheduled Substantial Completion Date set forth in Paragraph 4.3 of the Agreement, regardless of the reason for Contractor's failure, including but not limited to the acts or omissions of the Owner.

4.3.7.2.2 The Owner shall not be liable to the Contractor for, and the Contractor hereby expressly waives, any claims against the Owner on account of any damages, costs or expenses of any nature (that would increase the Guaranteed Maximum Price) incurred under subparagraph 4.3.7.1 (ii), (iii) or (iv) within for the first sixty (60) days after the scheduled Date of Substantial Completion set forth in Article 4.3 of the Agreement (without adjustment) that the Contractor, its Subcontractors, Sub-subcontractors, or any other person may incur as a result of any delays, interferences, suspensions, changes in sequence, failure to coordinate other contractors or vendors or the like, or that arise from or out of any act or omission of the Owner, the Civil Engineer, and/or the Owner's Representatives. It is specifically understood and agreed that the Contractor's sole and exclusive remedy in such event, within this first sixty (60) day period, shall be an extension of the Contract Time in accordance with the terms of the Contract Documents and.

if allowed by subparagraph 4.3.7.2.1 above, General Conditions Costs. It is further understood that Contractor's verifiable costs and expenses incurred during this sixty (60) day period, including General Conditions expenses, shall be reimbursable to the extent they are within the GMP.

4.3.7.3 The Contractor represents and warrants to the Owner that (a) the Construction Schedule contains allowances for delays caused by adverse weather conditions under normal seasonal conditions and (b) no claim for increase in the Contract Time shall be made as a result of rain, snow, cold, or other weather conditions, unless such conditions are extraordinary unusually severe for the prior three (3) month period taken as a whole by comparison to the weather of the same three (3) month period for each of the prior ten (10) years as set forth in the U.S. National Oceanic and Atmospheric Administration records for the area where the Work is being performed.

4.3.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

4.3.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

4.3.10 Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Subparagraph 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 Decision of Architect. Claims, including those alleging an error or omission by the Architect but excluding those arising under Paragraphs 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

4.4.2 The Architect will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party; (2) reject the Claim in whole or in part; (3) approve the Claim; (4) suggest a compromise; or (5) advise the parties that the Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

4.4.3 In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

~~4.4.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.~~

~~4.4.5 The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.~~

~~4.4.6 When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.~~

~~4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.~~

~~4.4.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, by mediation or by arbitration.~~

4.5 MEDIATION

~~4.5.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.~~

~~4.5.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.~~

~~4.5.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

4.6 ARBITRATION

~~4.6.1 Any claim arising out of or related to the Contract and/or Project, except those waived as provided for in Subparagraphs 9.10.4 and 9.10.5, and/or as may otherwise be provided by this Contract, any dispute concerning a question of fact arising under the agreement signed by the Owner and the Contractor which is not disposed of by agreement of the Parties shall be decided by the City Manager who shall notify the Contractor in writing of his determination. The Contractor shall be afforded the opportunity to be heard and offer evidence in support of the claim. The decision of the City Manager shall be final and conclusive unless an appeal is taken pursuant to the City Purchasing Ordinance as set forth in Chapter 17 of the Rockville City Code. Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation.~~

in accordance with the provisions of Paragraph 4.5.

4.6.2 ~~In the event of any appeal taken pursuant to Paragraph 4.6.1 or any litigation between the parties arising out of this Contract, the prevailing party will be entitled to recover any attorneys' fees and expert fees, as well as all costs and expenses of such appeal or litigation. Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.~~

4.6.3 ~~A demand for arbitration shall be made within the time limits specified in Subparagraphs 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.~~

4.6.4 ~~Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

4.6.5 ~~Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

4.6.6 ~~Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work and includes, but is not limited to, trade subcontractors, suppliers, manufacturers and materialmen, at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work, at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner ~~through the Architect~~ the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design), trade specialty and subcontract amount proposed for each principal portion of the Work. Each proposed Subcontractor shall be financially sound and shall be experienced and skilled to perform its portion of the Work. ~~The Architect~~ Owner will promptly reply to the Contractor in writing stating whether or not the Owner ~~or the Architect, after due investigation,~~ has reasonable objection to any such proposed

person or entity. ~~Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection. The Contractor shall, upon request, furnish Owner with copies of all executed Subcontracts and purchase orders (including prices) with no deletions.~~

5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner ~~or Architect~~ has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.2.3 If the Owner ~~or Architect~~ has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner ~~or Architect~~ has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work ~~at a price that was not artificially or unreasonably low~~, the Guaranteed Maximum Price Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Guaranteed Maximum Price Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner ~~or Architect~~ makes reasonable objection to such substitute.

5.2.5 Acceptance of or failure to object to any or all listed Subcontractors by the Owner does not relieve Contractor from any responsibility for its Subcontractors.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By appropriate written agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and ~~Architect~~ Civil Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and ~~Architect~~ Civil Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The Contractor shall include in every Subcontract a provision providing (a) for the assignment of all Subcontracts to the Owner pursuant to Article 5.4, (b) that each Subcontractor agrees to perform its Work for the Owner upon such assignment, and (c) the Owner shall only be responsible for those obligations of Contractor accruing after the Owner's exercise of its right to accept assignment of the Subcontract. In addition, the Subcontract shall provide that the Subcontractor shall not be entitled to any additional payment in the event of an assignment except as set forth in Subparagraph 5.4.2. The Contractor shall also require its surety to approve such assignments. The Subcontracts shall also contain a provision that if a Subcontract is terminated the Subcontractor shall notify the appropriate government authorities and close out his permit at no additional cost.

5.3.2 Contractor is fully responsible for acts and omissions of Subcontractors, Sub-subcontractors and persons either directly or indirectly employed by them, or under their control as Contractor is for its own employees.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2 Upon such assignment, if the Work in connection with a particular subcontract has been suspended for more than thirty (30) days after termination of the Contract by Owner, the Subcontractor's compensation shall be equitably adjusted for increases in direct cost incurred by that Subcontractor as a result of ~~resulting from~~ the suspension.

5.4.3 Except as provided in the last sentence of this Subparagraph 5.4.3, the Owner assumes no liability in connection with the Contractor's use of any Subcontractor to perform its obligations under this Contract. All rights and remedies of any Subcontractor or Sub-subcontractor shall be against Contractor; provided, however, that nothing herein shall be construed to affect any Subcontractor's or Sub-Subcontractor's in rem rights against the Project arising under applicable lien laws. Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Contract that accrue subsequent to the Owner's exercise of any rights under a conditional assignment.

5.5 All suitably stored materials, supplies and equipment, wherever located when paid for by the Owner, shall automatically become the absolute property of the Owner. The Contractor, any Subcontractor or any Sub-subcontractor shall deliver to the Owner appropriate bills of sale. All such materials, supplies and equipment shall be free of liens and encumbrances. Subcontracts entered into by the Contractor pursuant to this Contract, shall be let by the Contractor as an independent contractor, and the Contractor shall be responsible for work performed pursuant to such Subcontracts as if such work were performed by the Contractor with his own forces.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site, ~~under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation.~~ If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in the Contract Documents, Paragraph 4.3.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 ~~The Contractor~~ Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor (including the installation of tenant-furnished equipment) with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any ~~Owner approved~~ revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Other until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect.

Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to latent defects not then reasonably discoverable.

6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5. The Owner shall promptly remedy damage caused by the Owner's own forces or by separate contractors retained by Owner to completed or partially completed construction or property of the Contractor.

6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Subparagraph 3.14.

6.2.6 During the progress of the Work, it may be necessary for employees of the Owner, its affiliates, tenants or others to work in or about the Project. The Contractor shall afford such access to such employees or others as the Owner deems necessary. Such parties will comply with the Contractor's rules and procedures on the Project and shall provide waivers as may be reasonably requested by the Contractor. Except as may be reasonably necessary, the Contractor shall not impede or interfere with the ongoing business operations of the Owner at the site of the Work.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises ~~between among~~ the Contractor, ~~and~~ separate contractors ~~and the Owner~~ as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and, subject to the Contractor's right to make a claim, the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

7.1 GENERAL

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order; or Construction Change Directive, ~~or order for a minor change in the Work~~, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, ~~and~~ Contractor ~~and Architect~~, a A Construction Change Directive from the Owner requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor, ~~an order for a minor change in the Work may be issued by the Architect alone.~~

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order; or Construction Change Directive, ~~or order for a minor change in the Work.~~

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument prepared by the ~~Contractor Architect~~ and signed by the Owner ~~and~~ Contractor ~~and Architect~~, stating their agreement upon all of the following:

- .1 change in the Work;
- .2 the amount of the adjustment, if any, in the Guaranteed Maximum Price; ~~Contract Sum~~; and
- .3 the extent of the adjustment, if any, in the Contract Time.

7.2.2 Methods used in determining adjustments to the Guaranteed Maximum Price Contract Sum may include those listed in Subparagraph 7.3.3.

7.2.3 Except as otherwise agreed to by the parties, a Change Order shall include all of the Contractor's costs associated therewith. Except as otherwise agreed to by the parties, an agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Guaranteed Maximum Price and the Contract Time.

7.2.4 The Contractor shall not accept any request for a Change Order from any person other than the Owner and may not perform any work asserted to constitute a change in the Change Order Work until the Owner has approved the Change Order in writing, unless the Owner authorizes the Contractor, in writing, to proceed with a change prior to the Owner's final approval. Notwithstanding anything to the contrary herein, the Contractor shall not charge for overtime services in the performance of any Change Order Work, unless the Owner has specifically authorized overtime in writing. Owner may competitively bid changes in the Work and Contractor, Subcontractor and suppliers shall provide Owner with all documents Owner requests to facilitate such competitive bidding of changes in the Work.

7.2.5 Owner may request additive and deductive changes in the Work by giving Contractor a written "Change Order Request" itself or through the Owner, setting forth in detail the nature of the requested change. Upon receipt of a Change Order Request, Contractor shall promptly (but in no event later than seven (7) days within fifteen (15) days (or longer period as may be reasonably requested by Contractor) after receipt of the Change Order Request, return to Owner, three (3) completed copies of its "Change Order Proposal" setting forth in detail, with a suitable breakdown by trades and work classifications, Contractor's estimate of the changes in the Guaranteed Maximum Price (together with appropriate data acceptable to Owner supporting such estimate, including but not limited to bids, cost estimates, and applicable unit prices) and a proposed adjustment to the Contract Time resulting from such Change Order Request. If Owner approves in writing Contractor's Change Order Proposal, Owner will issue and Contractor will execute and accept a Change Order and the Guaranteed Maximum Price and the Contract Time shall be adjusted as set forth in such Change Order. If Contractor's Change Order Proposal is not agreed to by Owner in writing or if Contractor fails to submit a Change Order Proposal to Owner within such seven (7) day- agreed upon period and Owner thereafter issues a written Construction Change Directive directing Contractor to perform the requested change in the Work, Contractor shall proceed with the Work pursuant to Paragraph 7.3 hereof. Agreement on any Change Order shall constitute a final settlement on all matters related to the change in the Work including, but not limited to, all direct, indirect, and "cumulative effect" costs associated with such change and any and all adjustments to the Contract Sum, Guaranteed Maximum Price, and Contract Time, subject to performance thereof and payment therefor pursuant to the terms of this Contract. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

7.2.6 The Owner will review properly prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Guaranteed Maximum or Contract Time. Contractor's request for a change in the Work shall be properly prepared, accompanied by the proposed cost, sufficient supporting data and information to permit the Owner to make a reasonable determination without extensive investigation to determine if the change is warranted or can be considered without the preparation of additional drawings or specifications.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order ~~prepared by the Architect and signed by the Owner, and Architect,~~ directing a change in the Work prior to agreement on adjustment, if any, in the Guaranteed Maximum Price Contract Sum or Contract Time, or both. Notwithstanding Subparagraph 7.2.5, the The Owner at any time may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Guaranteed Maximum Price Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive ~~may~~ shall be used in the absence of total agreement on the entitlement to or terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Guaranteed Maximum Price, Contract Sum, the

adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties, and Contractor and any affected Subcontractor shall receive a mark-up calculated in accordance with Paragraph 5.3 of the Agreement; a mutually acceptable fixed or percentage fee; or
- .4 as provided in Subparagraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment, if any, in the Guaranteed Maximum Price Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in the Guaranteed Maximum Price Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment, if any, in the Guaranteed Maximum Price Contract Sum, the method and the adjustment shall be equitably determined by the Owner Architect on the basis of reasonable costs expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit determined as set forth herein, and the Contractor and any affected Subcontractor shall receive a mark-up calculated in accordance with Paragraph 5.3 of the Agreement. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Owner Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs Costs for the purposes of this Subparagraph 7.3.6 shall be as set forth in Articles 7 and 8 of the Agreement. shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 additional costs of supervision and field office personnel directly attributable to the change.

7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Guaranteed Maximum Price Contract Sum shall be actual net cost as confirmed by the Owner Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work may, at Owner's reasonable discretion sole election, shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner Architect will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Guaranteed Maximum Price Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

7.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Guaranteed Maximum Price Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

7.4.1 The Architect Civil Engineer will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor if approved by the Owner. The Contractor shall carry out such written orders promptly.

7.5 CONTRACTOR'S REPRESENTATION REGARDING COST OR CREDIT TO OWNER FOR CHANGED WORK

7.5.1 If the cost to the Owner of changed work is determined by the lump sum method, the Contractor warrants that the charge to the Owner does not exceed the sum of (a) any Subcontractor's charge to the Contractor for such work and (b) the Contractor's best estimate of the actual cost of the Contractor's work plus the permitted fee. If the cost to the Owner of changed work is determined on a time and materials basis, the Contractor warrants that the cost of any addition represents the true and actual cost, including Contractor's permitted fee, of such addition to the Contractor, Subcontractor or Sub-subcontractor or other entity involved in such addition. If the changed work will result in a reduction in the cost to the Owner, the Contractor warrants that the amount of any deduction represents the amount of deduction to the Contractor by the appropriate Subcontractor or the amount of Contractor's best estimate where the deduction involves work which the Contractor will perform.

7.6 All Change Orders shall be processed on AIA Form G701. Except as otherwise provided in the Agreement, there shall be no change in the Work, whether an alteration or addition to the Guaranteed Maximum Price or to any amounts due under the Contract Documents or to a change in the Contract Time, unless and until such alteration or addition has been authorized by a written Change Order executed and issued in accordance and strict compliance with the requirements with this Article 7 or by written authorization to proceed with such change in the Work signed by the Owner. The requirements set forth in this Paragraph 7.6 are of the essence. No course of conduct or dealing between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not any such unjust enrichment to the Work or to the Owner in fact exists, shall form the basis of any claim for an increase in the GMP in any amount due under the Contract Documents or a change in the Contract Time, and the terms of a fully-executed Change Order shall be conclusive. Nothing in this Paragraph 7.6 shall be construed to limit, in any way, the Contractor's right to assert a claim in accordance with Paragraph 4.3.5.

ARTICLE 8 TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The date of commencement of the Work is the date established in the Agreement.

8.1.3 The date of Substantial Completion is the date certified by the Architect Civil Engineer and approved by the Owner in accordance with Paragraph 9.8.

8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 PROGRESS AND COMPLETION

8.2.1 Time limits stated in the Contract Documents for Contractor's performance of the Work are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work for the reasons set forth in Subparagraph 4.3.7.1, Contractor shall request an extension of the Contract time in accordance with the provisions of Subparagraph 4.3.5, by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.

8.3.3 This Paragraph 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents, except as this Paragraph 8.3 is modified by Subparagraph 4.3.7.2.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum (or, if a Guaranteed Maximum Price is established, the Guaranteed Maximum Price) is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 If not previously submitted by Contractor, no fewer than fourteen (14) days prior to submitting the first Application for Payment, the Contractor shall submit to the Owner the verification required by Paragraph 15.2 of the General Conditions, the Performance and Payment Bonds, the insurance certificates, a listing of all Subcontractors (awarded at that time) and a Schedule of Values allocated to the various portions of the Work, by trade, with supporting data received from Subcontractors (including Subcontractor schedules of values), and shall incorporate costs for each Subcontractor for each portion of the Work and for General Condition Costs and Contractor's overhead and profit for the Work, and projecting cash disbursements throughout the Project, including dates when the Contractor anticipates requesting the Owner to pay for specifically identified material before such material is incorporated into the Work. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. The Contractor shall update the Schedule of Values, showing actual performance as compared to the original projection, as part of the Monthly Status Report. Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 The Contractor shall submit to the Owner an itemized Application for Payment, notarized, showing in complete detail all moneys paid out, costs incurred by Contractor on account of the Work during the previous period for which Contractor is to be reimbursed or the value of the Work performed, and the amount of Contractor's payment due as provided in the Owner-Contractor Agreement, lien waivers from Contractor and each Subcontractor, sub-subcontractor or supplier through the date of the last prior payment, and, if requested by the Owner, payrolls (if applicable) for all labor costs, copies of canceled checks, the method of allocating the Costs of the Work (e.g., hourly rates and unit costs), all invoices or bills received from vendors (if necessary) and

copies of Subcontractor requisitions included in the cost of the Work and rate of cost and reflecting retainage as set forth in the Owner-Contractor Agreement. At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

9.3.1.1 As provided in Subparagraph 7.3.8, such applications may at Owner's reasonable discretion sole election, include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay or the Contractor is otherwise entitled to withhold such payment after written notice of such to Owner.

9.3.2 The Owner will not make a progress payment for materials stored on-site or off-site, unless the Owner, in the exercise of its reasonable its sole and absolute discretion, authorizes in writing payment for such materials in accordance with this paragraph and only if such materials are stored properly and securely on-site or off-site, protected from the elements and vandalism. If made, payment by the Owner for materials suitably stored on-site or off-site will be limited to eighty percent (80%) of the cost of the materials (defined as the amount set forth on the manufacturer's invoice or shipping manifest) and may be made only after the Contractor delivers to the Owner the following documentation: (i) bills of sale from the supplier (or other point of purchase) made out to the Owner and other documentation evidencing purchase of such materials prior to the subsequent Application for Payment, the Owner's ownership thereof and the release of any right, title or lien thereto by any vendor (or that such payment and release of vendor rights will be made out of the funds so requisitioned by the Contractor), (ii) evidence that such materials are covered to their full replacement values by satisfactory bond and the Contractor's "all-risk" insurance or appropriate insurance for the location of storage against loss, theft and damage in a manner acceptable to the Owner, (iii) certification by the Contractor that such stored material has been segregated and marked as owned by Owner and has been inspected, that it meets the Contract Document requirements and that it constitutes all material of that type required for the Project and that it will be incorporated in the Work within sixty (60) days after receipt of the Application for Payment requesting payment for such stored material, and (iv) the Contractor's indemnification of the Owner for all costs, including attorneys' fees and expert fees, if for any reason the material is not incorporated in the Work. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work covered by funds received in connection with an Application for Payment will pass to the be applied pursuant to the terms of the Agreement so that title to the Work covered by the Application will pass to the Owner free and clear of liens and encumbrances. Owner upon incorporation in the Work or at no later than the time of payment, whichever occurs first. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 If the Contractor has made Application for Payment as provided in the Agreement and Paragraph 9.3 above, the Owner will, promptly within ten (10) days after receipt of such Application, issue to the Contractor, a Certificate for Payment for such amount reduced by retention as the Owner determines is proper or pursuant to the terms of this Agreement, or notify the Contractor in writing of his reasons for withholding from a Certificate for Payment. Nothing herein shall be construed as requiring the Owner to certify such Applications or to dilute the retainage. All Certificates and Payments, including those pursuant to a pending claim,

shall be subject to Owner's approval which approval shall not be unreasonably withheld. The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1.

9.4.2 The issuance of a Certificate for Payment an Application for Payment will constitute a representation by the Contractor the Architect to the Owner, based on the Contractor's Architect's observations and evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Contractor's Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. Notwithstanding Paragraph 9.6, the The Architect Owner may also withhold amounts from a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's Owner's opinion good faith reasonable judgment to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 3.3.2, because of:

- .1 defective Work not remedied for which the Contractor is responsible;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment in accordance with the provisions of the Agreement;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor for which the Contractor is responsible and which is not covered by insurance to be provided under the Contract Documents;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay for which the Contractor is responsible; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents persistent failure to carry out the Work in accordance with the Contract Documents, provided that prior to the submission of the Application for Payment, Owner has given written notice to Contractor describing such persistent failures specifically and informing the Contractor that a portion of payment otherwise due will be withheld unless such failures are cured or, in the case of failures which cannot be cured by the time of payment, unless effective and continuous actions are

being taken by Contractor to cure such failures;

.8 failure of the Contractor to provide updated Monthly Status Reports and progress schedules;

.9 the filing of a claim or an improper lien for which the Contractor is responsible or a reasonable basis to believe that such a claim or improper lien may be filed, except if the claim is the result of Owner's nonpayment of an amount contained in a previously submitted pay application over which no good faith dispute exists between Owner and Contractor;

.10 material failure to comply with the approved Schedule;

.11 erroneous estimates by the Contractor of the values of the Work performed; or

.12 the existence of any event of material default under the Contract.

Notwithstanding Paragraph 9.6 of the General Conditions, the Owner may also withhold a reasonable portion of any payment for any of the above stated reasons or any other reason related to Contractor's non-performance, including as an incentive for Contractor to perform. The Owner shall inform the Contractor in detail and in writing of such reason for withholding.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.6 PROGRESS PAYMENTS

9.6.1 After the ~~Architect~~ Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, ~~and shall so notify the Architect.~~

9.6.2 The Contractor shall promptly pay each Subcontractor, within five seven (7) days after upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Notwithstanding anything in this Subparagraph 9.6.2 to the contrary, the Owner may elect, in the Owner's sole reasonable discretion, to make any payment requested by the Contractor on behalf of a subcontractor of any tier jointly payable to the Contractor and such subcontractor. The Contractor and such subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create any (i) contract between the Owner and a subcontractor of any tier, (ii) obligations from the Owner to such subcontractor, or (iii) rights in such subcontractor against the Owner.

9.6.3 The ~~Architect~~ Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the ~~Architect and~~ Owner on account of portions of the Work done by such Subcontractor.

9.6.4 ~~Neither the~~ The Owner ~~nor Architect~~ shall have ~~an no~~ obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for

which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

9.7 FAILURE OF PAYMENT

9.7.1 ~~If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if If the Owner for reasons other than material default of the Contractor including, but not limited to those defaults set forth in Subparagraphs 9.5.1.1 through 9.5.1.12, does not pay the Contractor within ten-seven (7) days after the date established in the Contract Documents the amount properly due Contractor (subject to Agreement Subparagraph 12.1.1), certified by the Architect or awarded by arbitration, then the Contractor may, upon seven (7) additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Guaranteed Maximum Price Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.~~

9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Guaranteed Maximum Price and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Guaranteed Maximum Price by an amount equal to that which the Owner is entitled.

9.8 SUBSTANTIAL COMPLETION

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and the requirements of Paragraph 4.4 of the Agreement are satisfied.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor ~~shall thoroughly inspect the Work and shall prepare and submit to the Architect Civil Engineer and Owner a comprehensive list of items to be completed or corrected prior to final payment, and a written request for Civil Engineer's review of the Work for determining Substantial Completion.~~ Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.8.3 Upon receipt of the Contractor's list, the ~~Architect Civil Engineer and Owner~~ will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the ~~Architect's Civil Engineer and Owner's~~ inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can ~~occupy or~~ utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, promptly complete or correct such item upon notification by the Architect Owner or Civil Engineer. In such case, the Contractor shall then submit a request for another inspection by the ~~Architect Civil Engineer and Owner~~ to determine Substantial Completion.

9.8.3.1 ~~If the Contractor prematurely requests Civil Engineer's review of the Work, and the Civil Engineer or the Owner determines that the Project or designated portion thereof is not Substantially Complete, the Contractor shall reimburse the Owner for its additional costs involved in prematurely evaluating and reviewing the Work (including but not limited to any fees charged by the Civil Engineer).~~

9.8.4 When the Work or designated portion thereof is substantially complete in accordance with the Contract Documents, the ~~Architect Civil Engineer~~ will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the

Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer ~~as required under Clause 11.4.1.5~~ and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the ~~Architect~~ Civil Engineer and Owner as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the ~~Architect~~ Civil Engineer.

9.9.2 Immediately prior to such ~~partial occupancy~~ or use, the Owner, Contractor and ~~Architect~~ Civil Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not (i) constitute acceptance of Work not complying with the requirements of the Contract Documents, (ii) relieve the Contractor for responsibility for loss or damage due to or arising out of defects in, or malfunctioning of any Work, material, or equipment, or from any other unfulfilled obligations or responsibilities of Contractor under the Contract Documents, or (iii) commence any warranty periods from the Contract Documents; provided, however, that a Certificate of Partial Substantial Completion in form approved by the parties shall be issued when the Owner takes over and utilizes a portion of the Work that is complete (or substantially complete) for the use for which it is intended. The Certificate of Partial Substantial Completion issued in such event will contain a list of items for which warranty periods commence, but warranty periods on components of building systems not located within exclusively serving the area subject to Partial Occupancy will not commence until the Date of Substantial Completion of the entire Work.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 The Contractor shall inspect the Work to determine that it is complete, is in accordance with the Contract Documents, and that the Contract has been fully performed. Upon receipt of written notice from the Contractor that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect Civil Engineer will promptly make such inspection and, when the Architect Civil Engineer finds the Work acceptable under the Contract Documents and the Contract fully performed and the items set forth on the final iteration of the punchlist ("Final Punchlist") is complete, the Architect Civil Engineer will promptly issue a final Certificate for Payment stating that to the best of the Architect's Civil Engineer's knowledge, information and belief, and on the basis of the Architect's Civil Engineer's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's Civil Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Owner shall make final payment within thirty (30) days after the conditions of Paragraph 9.7.2 have been satisfied

9.10.1.2 If the Contractor prematurely requests Civil Engineer's review of the Work, and the Civil Engineer or the Owner determines that the Project or designated portion thereof is not finally complete, the Contractor shall reimburse the Owner for its additional costs involved in prematurely evaluating and reviewing the Work.

9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the ~~Architect~~ Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less the amount of final payment and any amounts withheld by Owner) have been paid or otherwise satisfied or will be paid from the amount due at final payment, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, (6) all governmental or other approvals and permits required for the beneficial use and occupancy of the Work as a first-class tenant space, including a Certificate of Occupancy or Non-Residential Use Permit, if required, (7) two (2) sets of as-built record Drawings and Specifications, in form and substance satisfactory to the Owner, showing, without limitation, all utility lines, all piping, ducts and similar work installed or altered by the Contractor, (8) a final Contractor's sworn statement and final waiver and claim release from the Contractor, duly executed and acknowledged and evidencing that all Subcontractors have been fully paid, and similar sworn statements and lien waivers and claim releases from all Subcontractors, Sub-subcontractors and material suppliers which releases will be contingent upon receipt of final payment, (9) all guarantees and warranties required by the Contract Documents, endorsed as necessary by the Contractor to the Owner and all Owner bonds have been released unless the release of such bonds is withheld thru no fault of Contractor, (10) certificates from the Contractor that the Project has been completed in accordance with the Contract Documents, (11) the Contractor's satisfactory cleaning of the site of the Work as required under the Contract Documents, (12) the notebooks identified in Subparagraph 3.12.12 herein; (13) two (2) sets of change orders; (14) reports including, but not limited to, equipment testing and balancing reports; (15) certifications and test results as called for in the Contract Documents; (16) keys approximately marked for all locks, along with key and master key inventory records; (17) maintenance stock as required by the Specifications; (18) minutes from all meetings; and (19) monthly progress photographs. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees, and expert fees. If a Subcontractor refuses to furnish a release or waiver required by the Contract Documents, Contractor will take appropriate steps to prevent the final imposition of a lien on Owner's real property, including but not limited to, attempts to ascertain the reason for refusal and to resolve the matter with the affected Subcontractor, contesting the Subcontractor's right to impose a lien in any appropriate court proceedings, and if necessary to avoid the final imposition of a lien, the posting of a bond or payment to the Subcontractor in an amount sufficient to avoid a lien. In the event that Contractor does not meet its obligations hereunder, it shall be liable to Owner to refund all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, ~~and the Architect so confirms,~~ the Owner shall, upon application by the Contractor ~~and certification by the Architect,~~ and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the ~~Architect~~ Owner prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; ~~or~~
- .3 terms of all special warranties at law and all contractual warranties required by the Contract Documents;
- .4 faulty or defective Work;

.5 design defects;

.6 Claims arising from or discovered from Owner's examination of Contractor's books and records as provided for in the Contract Documents;

.7 continuing obligations, liabilities or responsibilities of Contractor that would otherwise survive completion and acceptance of the Work and final payment by Owner including, without limitation, Contractor's indemnification obligations under the Contract Documents; or

.8 matters arising after final payment.

9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified to the Owner in writing by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with performance of the Work. Contractor shall include in all subcontracts provisions requiring Subcontractors to observe all appropriate safety precautions and programs and to comply with all applicable safety laws and regulations, provided however, that nothing herein shall relieve a Subcontractor of its day to day responsibility for the safety of persons and property in the performance of their subcontracts. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

.1 all persons involved in or affected by the Contractor's Work on the Project; employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors, it being understood that any of the Contractor's, Subcontractors' or Sub-subcontractors' materials and equipment stored in work areas on the site shall conclusively be deemed to be in the custody of the Contractor, and the Contractor shall be responsible for the security of such materials and equipment; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss within the Contractor's area of responsibility under the Agreement. The Contractor shall pay or contest any fines levied against the Owner or the Contractor or Subcontractors because of the Contractor's or Subcontractors' failure to comply with any safety regulations or laws. If the Contractor fails to pay or contest any such fines, the Owner may, upon written notice to the Contractor, pay them and deduct such amount from moneys due or to become due to the Contractor.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall promptly report to Owner all accidents on the Project that cause death, personal injury, or property damage. The Contractor shall be responsible, at the Contractor's sole cost and expense, for all measures necessary for exercising due care to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by

the Contractor. The cost of which shall be reimbursed within the GMP unless caused by the Contractor's negligence or the negligence of a Subcontractor.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods (such as driving or removal of piles, wrecking, demolition, excavation, blasting, or other similar potentially dangerous Work) are necessary for execution of the Work, the Contractor shall exercise utmost due care and carry on such activities under supervision of properly qualified personnel and shall give Owner fourteen (14) days advance notice. Contractor is fully responsible for any and all damages, claims, and for the defense of all actions against Owner, Owner's representatives, and Civil Engineer, and their consultants and employees resulting from the prosecution of such Work.

10.2.4.1 Use or storage of explosives is prohibited without prior which consent from the Owner, which must be received by the Contractor no less than fourteen (14) days in advance of use or storage of explosives. If the Owner grants consent, Contractor shall store all explosives in secure manner; mark all storage places clearly "DANGEROUS EXPLOSIVES" and shall maintain under care of competent watchmen at all times.

10.2.5 The Contractor shall promptly remedy at its sole cost and expense damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents and damage to property, and to supervise and train personnel in the use of dangerous and hazardous equipment, materials and substances necessary for the Work. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded with weights that will exceed design loads so as to endanger its safety, the safety of adjacent existing buildings, or the safety and health of persons or property.

10.2.8 Immediately upon entering the Project site for the purpose of beginning the Work, the Contractor shall locate all general reference points and take any actions necessary exercise due care to prevent their destruction and perform all other duties set forth in Article 15 of these General Conditions. Where required by law or for the safety of the Work or of adjacent property or for the ongoing operations on property adjacent to the Project, the Contractor shall shore up, brace, underpin and protect foundations and other portions of existing structures which are in any way affected by the Work.

10.2.9 Contractor shall give notice in writing at least 48 hours before breaking ground, to all persons having interests on or near the Project site, the Owner, public utility companies, owners of property having structures or improvements in proximity to the Project site of the Work, agencies, authorities, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or others who may be affected by Contractor's operation, in order that they may remove any obstruction for which they are responsible and have representatives on the Project site to see that their property is properly protected. Such notice does not relieve Contractor of responsibility for any damages, claims, and defense of all actions against Owner, Owner's representatives, and Civil Engineer, resulting from performance of such Work in connection with or arising out of Contract.

10.2.10 All parts of Work shall be braced to resist wind or other loads. Contractor shall perform Work with the explicit understanding that the design of the Project is based on all parts of Work having been completed and as such, the methods of performance of each part of Work shall be done accordingly.

10.2.11 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and take reasonable precautions to protect the Work, as necessary, from injury by any cause.

10.2.12 Temporary items (such as, but not limited to, scaffolding, staging, lifting and hoisting devices, shoring, excavation, barricades, and safety and construction procedures) necessary in completion of Project shall be the responsibility of the Contractor and its Subcontractors and shall comply with all applicable codes and regulations. It shall not be responsibility of Owner, Civil Engineer or their representatives to determine if Contractor, Subcontractors or their representatives are in compliance with the aforementioned regulations.

10.2.13 The Contractor shall comply with all Federal Occupational Safety and Health Administration Hazard Communications Act (HAZCOM) requirements, including properly maintaining Materials Safety Data Sheets (MSDS) at the Project site. The Contractor shall ensure that all MSDS are compiled in a single location at the Project site, and are available to the regulating agencies. The Contractor shall indemnify and hold the Owner and Civil Engineer harmless for their respective its failure to comply with this provision.

10.2.14 The Contractor shall be responsible for any fines, penalties or charges by any regulatory body by reason of any violation of safety or health regulations for which the Contractor is responsible. Contractor shall also be responsible for reimbursement of any OSHA fines, for which the Contractor is responsible, incurred by the Civil Engineer for Project site safety conditions created or controlled by the Contractor, that result in the Civil Engineer receiving a citation under the OSHA multi-employer citation provision.

10.2.15 The Contractor shall notify Owner's and Civil Engineer's personnel upon arrival to the Project site of any known safety or health hazards at the Project, and the precautions they should take.

10.2.16 The Contractor shall provide safety and health equipment (excluding boots) for the Owner and Civil Engineer to protect them from safety and health risks during the performance of their services during the construction of the Project.

10.2.17 The Civil Engineer's and Owner's review of Contractor's performance does not include review of adequacy of Contractor's safety or health measures.

10.3 HAZARDOUS MATERIALS

10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance concealed and undisclosed hazardous material or substance, including but not limited to asbestos, polychlorinated biphenyl (PCB), radon gas, industrial waste, acids, lead, alkaline, irritants, contaminants, or other pollutants, excluding mild chemicals used in the cleaning of finished building materials, or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

10.3.1.1 If at any time Contractor shall become aware, or have reasonable cause to believe, that there has occurred or will occur any release of asbestos or any other hazardous substance for which a warning or disclosure is or will be required under any applicable law or regulation, or for which any reporting or notification to any local, state or federal governmental agency is or will be required under any applicable law or regulation, the Contractor shall immediately upon discovering such condition or suspected condition give notice thereof to the Owner.

Contractor shall have no responsibility hereunder in connection with the detection, presence or removal of asbestos, lead, polychlorinated biphenyl (PCB) or any other toxic or hazardous substance, or any substance or materials the presence of which at the site requires special handling or may cause a violation of laws or regulations. Owner represents that to the best of its knowledge, after due investigation, no such substances are present at the project site. Contractor shall not be required pursuant to Article 7 to perform any Work of any kind relating to such toxic or hazardous substances.

In the event that Contractor encounters material reasonably believed to be a toxic or hazardous substance within the meaning of this paragraph 10.3.1, Contractor shall immediately stop work in the affected area and report the condition to the Owner and Civil Engineer in writing. Work in the affected area shall not thereafter be resumed until Contractor is reasonably satisfied either that the substance in question is neither toxic or that the toxic or hazardous substance has been removed or effectively rendered harmless.

10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7. The term "rendered harmless" shall be interpreted to mean that levels of asbestos, polychlorinated biphenyls or other hazardous materials are less than any applicable exposure standards set forth in OSHA or other applicable regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Subparagraph 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

10.4 The Owner and the Civil Engineer shall not be responsible under Paragraph 10.3 for hazardous materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents, and the Contractor has so notified Owner and the Civil Engineer.

10.4.1 Contractor shall avoid the use of hazardous substances, and avoid any releases of such hazardous substances into the environment, in performing services under the Contract Documents. If the use of some hazardous substance is required in connection with a service or work to be performed under the Contract Documents, Contractor shall use its best efforts to procure and use the least hazardous substance or material suitable for such work or service. Contractor shall certify to Owner, and provide Owner with manufacturers' or suppliers' data (if available) indicating, that no asbestos-containing materials have been used in performing the Work that are not specified in the Contract Documents.

10.4.2 Contractor shall not, without Owner's prior written consent, use any hazardous substances, or any construction materials containing hazardous substances, at the Project site if the presence of such substances or materials, or the manner in which they are used, will cause or risk causing any exposure for which a warning or disclosure, to any occupant of the building other than Contractor's own employees and permitted subcontractors, would be required under any applicable law or regulation, at any time during the performance of the Work or within six (6) months after the final completion of the Work.

10.4.3 Contractor shall provide the Owner with material safety data sheets ("MSDSs") for any chemicals or materials used by Contractor in connection with work at the Project site. If MSDSs are not available for any materials or item for which such a request is made, Contractor shall use its best efforts to obtain from the manufacturer or vendor appropriate information concerning any hazardous substances used in the manufacture of such material or item.

10.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

10.6 EMERGENCIES

10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

10.6.2 The Contractor shall promptly report in writing to Owner all accidents arising out of or in connection with the performance of the Work, whether on or off the Project site, which caused death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to Owner.

ARTICLE 11 INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor ~~Owner~~ shall purchase from and maintain in a company or companies acceptable to Contractor Owner, carrying at least an A+/XII rating by A.M. Best Company, and lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor and its Subcontractors from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written on an occurrence basis for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, ~~whether written on an occurrence or claims-made basis~~, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this ~~Article 11 Paragraph 11.1~~ shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least ~~30~~ sixty (60) days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable

promptness in accordance with the Contractor's information and belief.

11.1.4 The Owner shall secure, pay for and maintain until all Work, including Work required by any guarantee or warranty required by the Contract Documents, is completed, such insurance as will protect Contractor, the Owner, the Owner's Representative, and agents and employees of any of them from claims directly or indirectly arising or alleged to arise out of the performance of or failure to perform the Work, or the condition of the Work or the job site, from claims by workmen, suppliers or subcontractors, from claims under any scaffolding, structural work or safe place law, or any law with respect to protection of adjacent landowners, and from any other claims for damages to property or for bodily injury, including death, which may arise in whole or in part from operations by the Contractor or any subcontractor or anyone directly or indirectly employed by either of them. Such insurance shall cover all contractual obligations which the Contractor has assumed including the indemnification provisions under Paragraph 3.18.

11.1.5 The Owner shall secure, pay for and maintain completed operations insurance for a period of five (5) years after the date of Final Completion of the Work or such longer period as may be required by law.

11.1.6 Certificates required herein shall be furnished in duplicate, or copies of policies if requested by the Contractor, and shall specifically set forth evidence of all coverage required by Subparagraphs 11.1.1 and 11.1.2, and the Owner shall furnish to the Contractor copies of endorsements that are subsequently issued amending coverage or limits.

11.1.7 Compliance by the Owner with the insurance requirements contained in Article 11 shall not relieve him of liability under any indemnity or other provision set forth in the Contract Documents or limit his liability under the Contract Documents or applicable law.

11.1.8 Notwithstanding any other provision of this Contract, at Owner's election some or all of the insurance requirements set forth herein shall be replaced by those of an Owner Controlled Insurance Policy containing requirements reasonably acceptable to the Owner and Contractor, with an appropriate credit to the Owner.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Clauses 11.1.1.2 through 11.1.1.5.

11.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

11.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Paragraph 11.1.

11.4 PROPERTY INSURANCE

11.4.1 Unless otherwise provided, the ~~Contractor~~ Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles as set forth in Subparagraph 11.6.1.8 below. Such property insurance shall be maintained, unless otherwise

provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. This insurance shall provide that in the event of payment for any loss or damage, the insurer shall have no right of recovery against any parties named as insured or additional insureds.

11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for ~~Architect's Civil Engineer's~~ and Contractor's services and expenses required as a result of such insured loss.

11.4.1.2 ~~If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.~~

11.4.1.3 If the property insurance requires deductibles, the Owner ~~Contractor~~ shall pay costs not covered because of such deductibles.

11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

11.4.1.5 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.4.2 ~~Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.~~

11.4.3 ~~Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.~~

11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

11.4.5 ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

11.4.6 ~~Before an exposure to loss may occur, the Owner shall file with the Contractor parties shall file with each other a copy~~

of each policy that includes insurance coverages required by this ~~Article 11, Paragraph 11.4.~~ Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least thirty (30) days' prior written notice has been given to the Contractor and Owner.

11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the ~~Architect Civil Engineer, Architect's Civil Engineer's~~ consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered and paid by property insurance obtained pursuant to this Paragraph 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the ~~Architect Civil Engineer, Architect's Civil Engineer's~~ consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.4.8 A loss insured under Owner's ~~Contractor's~~ property insurance shall be adjusted by the Owner ~~Contractor~~ as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, ~~subject to requirements of any applicable mortgagee clause and of Subparagraph 11.4.10.~~ The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate written agreements, ~~written where legally required for validity,~~ shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.4.9 If required in writing by a party in interest, the Owner and Contractor as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Contractor's and Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner and Contractor shall deposit in a separate account proceeds so received, which the Owner and Contractor shall distribute in accordance with such agreement as the parties in interest may reach, ~~or in accordance with an arbitration award in which case the procedure shall be as provided in Paragraph 4.6.~~ If after such loss no other special agreement is made, ~~and unless the Owner terminates the Contract for convenience,~~ replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

11.4.10 The Owner and Contractor as fiduciary shall have power to adjust and settle a loss with insurers, ~~unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Paragraphs 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.~~

11.4.11 The Contractor shall secure, pay for and maintain whatever all-risk Fire or Extended Coverage (Property) Insurance the Contractor may deem necessary to protect himself against loss of owned or rented capital equipment and tools, including any tools owned by mechanics, and any tools, equipment, scaffoldings, stagings, towers and forms owned or rented by the Contractor. The requirements to secure and maintain such insurance is solely for the benefit of the Contractor. Failure of the Contractor to secure such insurance or to maintain adequate levels of coverage shall not obligate the Owner, the Owner's Representative, the Civil Engineer or their consultants or their agents and employees for any losses of owned or rented equipment. If the Contractor secures such insurance, the insurance policy shall include a waiver of subrogation clause as follows: is agreed that in no event shall this insurance company have any right of recovery against the Owner, the Owner's Representative or the Civil Engineer, their consultants, agents and employees.

11.5 PERFORMANCE BOND AND PAYMENT BOND

11.5.1 Contractor and Subcontractors shall be obligated to provide Little Miller Act Performance and Payment Bonds in the form attached hereto as Exhibit P, with dual obligee riders in forms acceptable to Owner, in accordance with the City Purchasing Ordinance set forth in Chapter 17 of the Rockville City Code. The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as

stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

11.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

11.5.3 All bonds shall be written through a reputable and responsible agency licensed to do business in the place in which the Project is located. The surety must be rated "A" or better as to management by Best's Insurance Guide published by the Alfred M. Best Co., Inc., Oldwick, New Jersey 08858. The bond amount shall not exceed 10% of the policy holder's surplus (capital and surplus) of the surety as listed by the Best's Insurance Guide. Attorneys-in-Fact who sign such surety bond must file with it a certified copy of their power of attorney to sign such bonds.

11.6 FORM OF INSURANCE COVERAGE

11.6.1 The insurance required by Subparagraph 11.1.1 shall be written on an occurrence basis for not less than any limits of liability required by law or by those shown below, whichever is greater. The Contractor's use of self insurance, which must be approved in writing by the Owner, or the amount of deductibles shall not limit his indemnification obligations under this Contract or applicable law.

- 1 Worker's Compensation: Statutory
Employer's Liability: \$500,000 per accident, minimum limits

The Contractor's and Subcontractor's Worker's Compensation policy shall be endorsed to waive subrogation against the Owner, its shareholders, officers and directors, the Civil Engineer and its consultants, and their agents and employees.

- 2 Commercial General Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis, written on the occurrence form, on a per project basis including:

Premises operations (including X, C & U).

Independent Contractor's Protective.

Products and Completed Operations to be maintained for three (3) years after final payment.

Contractual - including specified provision for the Contractor's Obligation under Paragraph 3.18.

Personal injury.

Broad form property damage including completed operations.

<u>Minimum Limits: \$</u>	<u>Each Occurrence Bodily Injury and</u>
	<u>Property Damage</u>
<u>\$</u>	<u>General Aggregate on a Per Project Basis</u>
<u>\$</u>	<u>Personal Injury and Advertising Injury Liability</u>
<u>\$</u>	<u>General Aggregate on a Per Project Basis</u>
<u>\$</u>	<u>Fire legal Liability</u>
<u>\$</u>	<u>Medical</u>

The policy shall contain an endorsement indicating the Owner, Owner's Representative, Contractor, Subcontractors and their shareholders, officers and directors are "additional insureds" under the

Contractor's Owner's Commercial General Liability coverage, and the coverage available to them under the policy is primary and non-contributory over any other coverage available to them.

The maximum deductible shall be \$

3 Business Automobile Policy:

Minimum Limits: \$ Combined Single Limit Bodily Injury and
Property Damage Per Project

Coverage shall include all automobiles owned, leased, hired or borrowed.

The policy shall contain an endorsement indicating the Owner, Owner's Representative and their shareholders, officers and directors of Owner are "additional insureds" under the Contractor's Business Automobile Policy, and the coverage available to them under the policy is primary and non-contributory over any other coverage available to them.

The maximum deductible shall be \$

4 Umbrella Excess Liability:

Minimum Limits: \$ Per project and following the form
of the primary insurance required by
Clauses 11.6.1.1, 11.6.1.2 and 11.6.1.4

The policy shall contain an endorsement indicating the Owner, Owner's Representative, Contractor, Subcontractors and their shareholders, officers and directors are "additional insureds" under the Contractor's Owner's Umbrella and/or Excess Liability policy, and the coverage available to them under the policy is primary and non-contributory over any other coverage available to them.

5 ~~The Contractor is responsible for insuring that each Subcontractor provides adequate insurance for construction projects of this type.~~

6 ~~The policies provided by the Owner and Contractor shall provide that any obligation imposed upon the insured (including without limitation, the liability to pay premiums) shall be the sole obligation of the Owner and Contractor and not of any other insured.~~

7 ~~The Owner and Contractor shall require each insurer under each policy provided by the Owner and Contractor to waive all rights of subrogation against the Owner or Contractor, any right of set-off or counterclaim, and any other right to deduction, whether by attachment or otherwise.~~

8 ~~As to the property insurance all losses shall be payable, notwithstanding the construction, use or occupancy of the Project or site for purposes more hazardous than permitted by the terms of such property policy. The deductible on the property insurance shall not exceed \$, as well as the amounts set forth on the declaration page of such property policy.~~

9 ~~Each Subcontractor, for the insurance coverage it is obligated to provide, shall furnish the Contractor with a valid Certificate of Insurance confirming the insurance coverage and stating that no reduction in, cancellation, or expiration of the policy will be made without thirty (30) days' written notice by the insurance company to the Contractor.~~

10 ~~The obligation of the Contractor as set forth in paragraph 3.18.1 of the General Conditions shall be specifically referenced in the insurance certificates as being incorporated in the insurance coverage provided to the Owner under this Article.~~

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to the ~~Architect's Civil Engineer's or Owner's~~ request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the ~~Architect Civil Engineer or Owner~~, be uncovered for the ~~Architect's Civil Engineer's or Owner's~~ examination and be replaced at the Contractor's expense without change in the Contract Time or Cost of the Work.

12.1.2 If a portion of the Work has been covered which the ~~Owner or Architect Civil Engineer~~ has not specifically requested to examine prior to its being covered, the ~~Owner Architect~~ may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect Owner as defective or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's Owner and its representatives and employees services and expenses made necessary thereby, at no increase to the GMP, shall be at the Contractor's expense. All machinery equipment, and building systems used by Contractor or Subcontractor prior to Substantial Completion shall be properly serviced and conditioned restored to "like new" condition, if necessary, at no cost to the Owner, at no increase in the GMP. Payment for such costs shall be in accordance with Articles 7 and 8 of this Agreement.

12.2.2 AFTER SUBSTANTIAL COMPLETION

12.2.2.1 In addition to the Contractor's obligations under Paragraph 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. Except in the case of an emergency, the Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner ~~or Architect~~, the Owner may correct it in accordance with Paragraph 2.4.

12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. The obligation under this Subparagraph 12.2.2 shall survive acceptance of the Work and termination of the Contract.

12.2.2.3 The one-year period for correction of Work shall ~~not~~ be extended by corrective Work performed by the Contractor pursuant to this Paragraph 12.2.

12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 The Contractor shall ~~bear the cost of~~ be responsible for correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.5 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.2.6 In any case where, in fulfilling the requirements of the Contract Documents or of any guarantee embraced therein or required thereby, the Contractor disturbs any work performed under another contract, Contractor shall restore such disturbed work to a condition satisfactory to the Owner and shall guarantee such restored work to the same extent as it was performed under the other contract.

12.2.7 If during the guarantee or warranty period, any material, equipment or system requires corrective work because of defects in materials or workmanship, the Contractor shall undertake all required corrective work within ~~forty-eight (48) hours~~ five (5) days after receiving the written notice from the Owner and work diligently until corrective work is completed. If such corrective work can not reasonably be commenced within five (5) days, Contractor, after written notice and approval from Owner, shall commence such corrective work within a reasonable time. If the Contractor does not, in accordance with the terms and provisions of the Contract Documents, commence all corrective work within a reasonable time ~~forty-eight (48) hours~~ five (5) days or if the Contractor commences such work but does not pursue it in an expeditious manner, the Owner may either notify the bonding company (if any) to have such work and/or obligations performed at no additional cost to the Owner or upon written notice to the Contractor, may perform such work and/or obligations and charge the costs thereof to the Contractor. Contractor shall correct any defects which are the responsibility of the Contractor under the Contract Documents as reasonably determined by the Owner and if it is later determined that such defects were the responsibility of others, Owner will pay Contractor an amount calculated in accordance with Subparagraph 7.3.6 of these General Conditions. The obligations of the Contractor or any Subcontractor under the terms and provisions of the Contract Documents shall not be limited to the payments made by the surety (if any) under the provisions of this contract. Ten (10) months following Substantial Completion the Contractor shall accompany the Owner on an inspection of the Project and the Contractor shall promptly correct any defective Work or non-conforming Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Guaranteed Maximum Price Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made; if acceptance occurs after final payment, Contractor shall pay an appropriate amount to Owner. If Contractor requests Owner to accept nonconforming Work, Contractor shall pay Owner all costs incurred in Owner's investigation of whether to accept such Work, including but not limited to fees and charges of Civil Engineer, engineers, testing agencies, etc.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Contract shall be governed by the law of the place where the Project is located, without reference to its choice of law rules.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or subcontract it as a whole without the written consent of the Owner, nor shall Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner. Except as provided in Subparagraph 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party If the Contractor attempts to make such an assignment without such consent, that party it shall nevertheless remain legally responsible for all obligations under the Contract.

13.2.3 Contractor shall not assign any monies due or to become due hereunder without written consent of Owner and of Contractor's Surety, which consent of Surety shall be filed with Owner, as well as the proposed assignment. In case Contractor assigns all or any part of any monies due or to become due under this Contract, such instrument or assignment must contain clause substantially to effect that it is agreed that right of assignees in and to any monies due or to become to Contractor shall be subject to prior liens and claims of all persons, firms and corporations for services rendered; for payment of all laborers and mechanics for labor performed; for payment for all materials and equipment furnished and payment for all materials and equipment used or rented in performance of the Work called for in Contract; and for payment of any liens, claims, or amounts due to governments or any of their funds.

13.2.2 The Owner may, without consent of the Contractor, assign the Contract to any person or entity to an institutional lender providing construction financing for the Project. In such event, the lender assignee shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment and Owner shall provide evidence of assignee's ability to meet Owner's obligations under this Agreement.

13.3 WRITTEN NOTICE

13.3.1 All notices required or permitted hereunder shall be in writing and shall be deemed duly given and received when delivered in person (with receipt therefor), when actually received by facsimile (with confirmation therefor), on the next business day after deposit with a recognized overnight delivery service, or on the fifth (5th) day after being sent by United States registered or certified mail (return receipt requested), to the following addresses:

to Contractor: Andrew Linden

a copy to: Tom Kenney
Kevin Higgins
The Whiting-Turner Contracting Company
300 East Joppa Road, 8th Floor
Towson, MD 21286

If to Owner: City of Rockville
c/o ryan McDavitt and Art Chambers
111 Maryland Avenue
Rockville, MD 20850

Don Briggs FRIT
1626 East Jefferson Street
Rockville MD 20852-4041

With a copy to: Paul T. Glasgow, Esquire
Venable LLP
One Church Street
Fifth Floor
Rockville, MD 20850

Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

13.4 RIGHTS AND REMEDIES

13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law or in equity.

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except as specifically limited herein, and any such rights and remedies shall survive the acceptance of the Work and/or any termination of the Contract Documents.

13.4.2 No action or failure to act by the Owner, ~~Architect~~ Civil Engineer or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. ~~Unless otherwise provided, the~~ The Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect Owner timely notice of when and where tests and inspections are to be made so that the Architect Owner may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded. Tests, inspections and approvals as used in this Subparagraph 13.5.1 shall not include any tests, inspections or approvals referred to in Subparagraphs 2.2.2. Further, as used in this Subparagraph 13.5.1, the words "tests, inspections, and approvals" shall include only those mentioned specifically in the Contract Documents as being part of the Work.

13.5.2 If the ~~Architect~~ Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the ~~Architect~~ Owner will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the ~~Architect~~ Owner of when and where tests and inspections are to be made so that the ~~Architect~~ Owner may be present for such procedures. Such costs, except as provided in Subparagraph 13.5.3, shall be at the Owner's expense.

13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents and any Legal Requirement, all costs made necessary by such failure including those of repeated procedures and compensation for the ~~Architect's Civil Engineer's~~ services and expenses shall be at the Contractor's expense. Contractor agrees that the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services reasonably necessary and related to remedial operations caused by the negligence of the Contractor or any Subcontractor performed to correct deficiencies in the Work, shall be borne by Contractor.

13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the ~~Architect~~ Civil Engineer.

13.5.5 If the ~~Architect~~ Owner is to observe tests, inspections or approvals required by the Contract Documents, ~~they the~~ Architect will do so promptly and, where practicable, at the normal place of testing.

13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.5.7 REFERENCE STANDARDS AND SPECIFICATIONS

13.5.7.1 Various standards and specifications are incorporated by reference in the technical sections of the specifications. In all such instances, the reference shall be to the latest edition, including amendment or revision, in effect as of the date of these specifications, unless a specific issue is identified.

13.5.8 MATERIAL INSPECTIONS

13.5.8.1 The Owner has the right, but not the obligation, to inspect any material or equipment at any state of development or fabrication, whether specified or noted, including, but not limited to, the manufacturer's plant or mill. Such inspection shall

not release the Contractor from any responsibility or liability with respect to such material or equipment.

13.5.8.2 Witnessed performance tests shall occur when required by governing authorities or when the Specifications so require.

13.5.8.3 Testing mentioned in the technical Specifications to be performed by the Owner (a) shall be performed by the Contractor unless the Owner elects otherwise or the Owner expressly agrees in writing to perform such testing prior to the commencement of construction, and (b) if executed by the Owner shall be executed, and the results thereof shall be provided to the Contractor and the Civil Engineer. Performance or nonperformance of the test by the Owner shall not relieve the Contractor of responsibility for compliance with requirements of the Contract Documents.

13.6 INTEREST

13.6.1 Payments due and unpaid under the Contract Documents shall bear interest at the rate set forth in Paragraph 14.2 of the Agreement, from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1 As between the Owner and Contractor:

- .1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
- .3 After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Paragraph 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

13.8 MECHANIC'S LIENS AND CLAIMS

13.8.1 Contractor, on its behalf and on behalf of its Subcontractors and Sub-subcontractors, hereby acknowledges and agrees that the Owner is a Public Entity and that the Project which is the subject of this Contract involves land and improvements that are publicly owned and not subject to mechanic's liens, and agrees not to institute any mechanic's lien claims in connection herewith, and Contractor agrees to indemnify and hold harmless Owner from any and all lien claims filed in connection with this Project, and agrees to bear all costs, including attorneys' fees and expenses incurred by Owner in connection with any such lien claims.

13.8.2 If, at any time, any Petitions to Establish a lien or any other claims ("lien or other claim") is filed directly against the Owner for labor performed or materials or equipment furnished or delivered to or for the Work, the Contractor, within ten (10) calendar days after the date of the filing of such lien or other claim, and to the Owner's satisfaction, shall discharge, remove and post a bond satisfactory to the Owner for such lien or other claim and shall indemnify and hold the Owner harmless for all costs, including but not limited to, attorneys' fees and expert fees, regarding such lien or other claim, together with interest on the same from the date any such cost was paid by Owner until reimbursed by Contractor at the rate of interest provided in Paragraph 14.2 of the Agreement. The obligations of Contractor under this Subparagraph shall survive the expiration or termination of the Contract.

13.8.3 To the extent applicable, the Contractor hereby subordinates all contractor's, laborer's, mechanic's, materialmen's, judgment and other similar liens that it may have or acquire hereunder as to the Work, or to the land on which the Work is located to the liens securing payment of sums now or hereafter borrowed by the Owner for the Work and the land. At the request of the Owner, the Contractor shall execute such additional documents as may be requested from time to time by the Owner to give effect to the provisions hereof and shall use his best efforts to cause the Subcontractors and other parties furnishing labor or materials for the Work to subordinate their liens to such aforesaid sums.

13.8.4 Contractor shall promptly advise Owner in writing of any action, administrative or legal proceeding or investigation as to which Subparagraph 13.8.1 may apply, and Contractor, at Contractor's expense, shall assume on behalf of Owner and Owner's Representative and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to Owner, provided that Owner and Owner's Representative shall have the right to be represented therein by advisory counsel of their own selection and at their own expense. In the and provided further that if the defendants in any such action include Contractor and Owner, or Owner's Representative, and Owner or Owner's Representative shall have reasonably concluded that there may be legal defenses available to any of them which are different from or additional to, or inconsistent with, those available to Contractor, or if Owner or Owner's Representative conclude Contractor has a conflict of interest and cannot adequately represent Owner or Owner's Representative, then Owner or Owner's Representative, or both, shall have the right to select separate counsel to participate in the defense of such action on their own behalf for which fifty percent (50%) of the cost shall be at the Contractor's expense. In the event of failure by Contractor to fully perform in accordance with this Subparagraph, Owner or Owner's Representative, at the option of any of them, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses, including but not limited to attorneys' fees and expert fees, so incurred by Owner and Owner's Representative in that event shall be reimbursed by Contractor to Owner or Owner's Representative, together with interest on the same from the date any such expense was paid by Owner or Owner's Representative until reimbursed by Contractor at the rate of interest provided in Paragraph 14.2 of the Agreement. The obligations of Contractor under this Subparagraph shall survive the expiration of termination of the Contract.

13.8.5 Notwithstanding anything to the contrary within the Contract Documents, Contractor shall be entitled to reimbursement, within the GMP, of all costs incurred in defending, discharging and settling liens or claims arising out of Contractor's responsibilities under the Agreement to the extent such liens or claims are not due to the negligence of the Contractor and such costs are not reasonably recoverable from the Subcontractors or other parties for whom the Contractor is responsible.

13.9 DAMAGE TO EXISTING STRUCTURES AND PROPERTY

13.9.1 The Contractor shall conduct his operations so as not to damage adjacent structures, existing structures, any work installed either by him or by other contractors, or any personal property of the Owner or others. If any such damage is related to his operations, the Contractor shall repair and make good as new the damaged portions at his own expense, and the Contractor shall be liable for the damage caused. The obligations of this Subparagraph 13.9.1 shall survive termination of the Contract.

13.10 MANUFACTURER'S WARRANTIES

13.10.1 The Contractor warrants that all manufacturers' or other warranties on all materials and equipment furnished by the Contractor shall run directly to or be specifically assigned to the Owner on demand or upon final completion of the Project.

13.10.2 The Contractor warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications, as applicable, and that the materials and equipment shall function as intended by the manufacturer. Prior to final completion, the Contractor shall obtain a statement from the manufacturer approving the Contractor's installation of all materials and equipment as required by the Contract Documents. If the Owner seeks to enforce a claim based upon a manufacturer's warranty and such manufacturer fails to honor its warranty based, in whole or in part, on a claim of defective installation, the Owner shall be entitled to enforce any claim for defective installation against the Contractor.

13.11 The Contractor and Subcontractors shall not be permitted, without Owner's written consent which may be withheld in the sole and absolute discretion of the Owner, to place any signs stating the name of the Contractor or Subcontractors on the

Project site.

13.12 The headings contained in the Contract are inserted only for convenience and reference and are not meant to define, limit or describe the scope or intent of the Contract Documents or in any way to affect the terms and provisions set forth herein.

13.13 If any term or provision of the Contract, or the application thereof to any person or circumstance, shall be invalid or unenforceable to any extent, the remainder of the Contract, or the application of the Contract to persons or circumstances other than those against whom or which such term or provision is invalid or unenforceable, shall not be affected thereby; and each term and provision of the Contract shall be valid and enforceable to the fullest extent permitted by law.

13.14 All matters that relate to the termination or expiration of this Contract, or that in the normal course may not occur or be effectuated until after such termination or expiration, as well as all rights and obligations of the parties pertaining thereto whether or not specifically stated in a particular provision in this Contract, will survive any termination or expiration of this Contract and will be given full force and effect notwithstanding any termination or expiration of this Contract, but such survival will not operate to extend any applicable statute of limitations.

13.15 The Contractor shall take and develop 8.5" x 11" color progress photographs of the Work twice each month at the same times and places each month. Such photographs shall be in sufficient quantity to accurately depict the point to which construction has progressed.

13.16 **EQUAL OPPORTUNITY**

- 1 Contractor and Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates for pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.
- 2 Contractor and Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.
- 3 If the Contractor fails to comply with nondiscrimination clauses of this Contract or fails to include such contract provisions in all subcontracts, this Contract may be declared void AB INITIO, cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further contracts with the Owner. Any employee, applicant for employment, or prospective employee with information concerning any breach of these requirements may communicate such information to the City Manager who shall commence a prompt investigation of the alleged violation. Pursuant to such investigation, the contractor will permit access to the contractors books, records, and accounts. If the City Manager concludes that the Contractor has failed to comply with nondiscrimination clauses, the remedies set out above may be invoked.

13.17 **DISCRIMINATION**

13.17.1 In the performance of the Work, the Contractor and Subcontractors agree not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability, sexual orientation or national origin. This provision shall include, but be limited to the following: employment, upgrading, demotion, promotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.

13.18 GENERAL PROVISIONS

13.18.1 All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, paragraphs, and subparagraphs are for convenience only and neither limit nor amplify the provisions of this Contract in itself. The use herein of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

13.18.2 Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

13.18.3 Each party hereto agrees to do all act and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

13.18.4 Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~one hundred twenty (120)~~ 30 ninety (90) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- ~~.1~~ issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped; ~~or~~
- ~~.2~~ an act of government, such as a declaration of national emergency which requires all Work to be stopped; ~~or~~
- ~~.3~~ because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; ~~or~~
- ~~.4~~ the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Subparagraph 2.2.1.

14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, ~~or 120 days in any 365-day period, whichever is less.~~

14.1.3 If one of the reasons described in Subparagraph 14.1.1 ~~or 14.1.2~~ exists, the Contractor may, upon ~~ten (10)~~ seven days'

written notice to the Owner and Architect, terminate the Contract and recover from the Owner (i) any unpaid amounts due him for the Cost of the Work, General Conditions and Contractor's Fee under Article 5 of the Owner-Contractor Agreement, including retainage, and (ii) reasonable close-out costs actually incurred to the date of close-out and directly related to such termination, including resolution of any pending claims by Contractor, Subcontractors or suppliers of any tier which would be an increase to the GMP. However, in no event shall the Owner be liable to the Contractor (i) for an amount in excess of the Guaranteed Maximum Price as modified by approved Change Orders, less amounts already paid to Contractor, (ii) damages, or (iii) any anticipated profits for unperformed Work. In addition, such payments to the Contractor shall be reduced by any setoffs to which the Owner is entitled under this Contract or any other Contract between Contractor and Owner or any entity related to Owner, payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.3.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make prompt payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of a substantial material breach of a provision of the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner, ~~upon certification by the Architect that sufficient cause exists to justify such action,~~ may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, ~~seven~~ ten (10) days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Paragraph 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. ~~Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's Civil Engineer's and Owner's Representatives services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall not be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. ~~The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.~~

14.2.5 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Owner shall be entitled to recover its damages resulting from such termination including, but not limited to, all costs in excess of the Guaranteed Maximum Price, including compensation for the Civil Engineer's and Owner's Representative's services and expenses made necessary thereby, and, if the Work is not completed by the date set forth in Paragraph 4.2 of the Agreement, liquidated damages for delay as set forth in the Agreement. All amounts paid pursuant to this Subparagraph 14.2.5 shall be certified by the Owner, upon application, and the obligations of this Subparagraph 14.2.5 shall survive the termination of this Agreement.

14.2.6 It is recognized that if the Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors on account of the Contractor's insolvency, such circumstance could impair or frustrate the Contractor's performance of this Contract. Accordingly, the parties to this Contract agree that upon the occurrence of any such event, the Owner shall be entitled to request of the Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents and the Contractor shall have (7) business days to provide such assurances. The Contractor's failure to comply with such request shall entitle the Owner to terminate this Contract immediately and to the accompanying rights thereunder. The Owner shall be entitled to recover its damages resulting from such termination including, but not limited to, all costs incurred by the Owner in excess of the Guaranteed Maximum Price and, if the Work is not completed by the scheduled date of Substantial Completion, liquidated damages for delay as set forth in Article 4 of the Agreement.

14.2.7 If Owner wrongfully terminates Contractor for default, such termination shall be deemed a termination for convenience and Contractor's sole remedy will be the recovery of those amounts set forth in Subparagraph 14.4.3.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Subparagraph 14.3.1. ~~Adjustment of the Contract Sum shall include profit.~~ No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

14.4.1 The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause.

14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- .1 cease all operations except as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate (or, at Owner's election, assign to Owner) all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination, the proportional amount of General Conditions actually incurred and proven and proportional amount of Contractor's Fee under Article 5 of the Owner-Contractor Agreement, including retainage and for items properly and timely fabricated off the Project site, delivered and

stored in accordance with Owner's instructions and resolution of any pending claims by Contractor, Subcontractors or suppliers which would be an increase to the GMP. Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits. Owner shall be credited for (i) payments previously made to Contractor for the terminated portion of the Work, (ii) claims that the Owner has against Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum. In no event, however, will such amounts payable to Contractor exceed the Guaranteed Maximum Price as modified by approved Change Orders, reduced by the amount of prior payments made to Contractor. Subcontracts, subsubcontracts, and purchase orders will contain appropriate provisions for termination for convenience under this Paragraph 14.4, executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 MEASUREMENTS AND RELATED MATTERS

15.1 Upon beginning Work the Contractor shall check the Owner's survey and shall notify the Owner of any discovered errors in the survey within ~~five (5) days~~ a reasonable time after the Date of Commencement. Within ~~ten (10) days~~ reasonable time after the Date of Commencement, the Contractor shall lay out the Work from the drawings place marks and establish a mark to which all measurements shall be referenced and shall perform a wall check survey.

15.2 The Contractor shall be responsible for any damage that may be sustained by others for incorrect location of the Work which is the responsibility of the Contractor. The Contractor shall verify in writing to the Owner, prior to ~~processing the first Application for Payment~~ commencing each phase of the Work, all grades, lines, levels, dimensions, and elevations which are necessary for the Contractor to perform the Work. Nothing in this provision shall diminish Contractor's obligations under the Contract Documents.

15.3 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements, dimensions, elevations and conditions with other information known to the Contractor from the Contract Documents or otherwise throughout construction.

15.4 All work and material furnished hereunder shall be prepared, furnished and erected in strict conformity with the Contract Documents.



July 16, 2004

Whiting-Turner Contracting Company
300 East Joppa Road
Baltimore, Maryland 21286

Attention: Mr. Kevin Higgins, Vice President

Dear Mr. Higgins:


The City of Rockville, pursuant to Article 4.1 of the Draft Agreement between Owner and Contractor dated July 15, 2004 (the "Agreement"), is pleased to give Whiting-Turner Contracting Company this Notice To Proceed (NTP) on Phase 1 of Public Improvements Contract for Rockville Town Center as approved by the Mayor and Council on July 12, 2004.

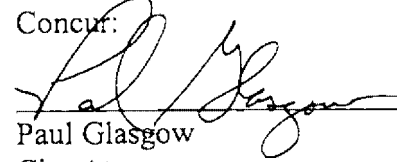
As agreed between all parties, the current draft AIA 111, and the current draft AIA 201 will govern the work included under this NTP until the Final Contract is signed. The Final Contract is anticipated to be signed on or before August 15, 2004. The contractor's signature on the concur line of this NTP is a binding agreement to utilize the current draft of the AIA 111 and AIA 201 to govern the work until the Final Contract is signed.

Whiting-Turner is released to perform work under the Agreement not to exceed \$975,679. The scope of work under this Notice to Proceed is identified in Attachment 2 of the attached Mayor and Council agenda sheet. All Work performed pursuant to this NTP is part of the Work under the Final Contract and all amounts billed and all amounts paid pursuant to this Notice to Proceed shall be applied to the Final Contract.

Please contact Mr. Don Briggs at 301.998.8100 or Mr. Ryan McDavitt at 240.314.8251 if you have any questions on this issue.

Sincerely,


Arthur D. Chambers, AICP, Director
Community Planning and Development Services
City of Rockville
Rockville, Maryland

Concur: 
Paul Glasgow
City Attorney


Kevin Higgins, Vice President
Whiting-Turner Contracting Company

7/21/04
Date

7/19/04
Date

City of Rockville
111 Maryland Avenue
Rockville, Maryland
20850-2364
www.rockvillemd.gov

Community Planning and
Development Services
240-314-8200
TTY 240-314-8137
FAX 240-314-8210

Historic Preservation Office
240-314-8230

Inspection Services Division
240-314-8240

Long Range Planning
Division
240-314-8200

Planning Division
240-314-8220

Revitalization/Housing
Division
240-314-8200

MAYOR
Larry Giammo

COUNCIL
Robert E. Dorsey
John F. Hall, Jr.
Susan R. Hoffmann
Anne M. Robbins

ACTING CITY MANAGER
Catherine Tuck Parrish

CITY CLERK
Claire F. Funkhouser

CITY ATTORNEY
Paul T. Glasgow

July 16, 2004

Subject: Notice To Proceed; Phase I of Public Improvements Contract for Rockville Town Center

Attachments:

- (1) Mayor and Council agenda item No. 12, dated July 12, 2004
- (2) Draft AIA 111, dated July 15, 2004
- (3) Draft AIA 201, dated July 15, 2004

cc: Paul Glasgow, City Attorney
Eileen Morris, Contracts Officer
Don Briggs, Director of Development, FRIT
Ryan McDavitt, Project Manager, Town Square
Andrew Linden, Whiting-Turner Contracting Company